

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

08cr240 (BMC)

V.

U.S. Courthouse
Brooklyn, New York

JOHN FRANZESE,
JOHN CAPOLINO,
JOSEPH DiGORGIA,
CHRISTOPHER CURANOVIC

June 15, 2010

Defendants. 9:30 a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

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18 Proceedings recorded by mechanical stenography, transcript
produced by CAT.

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1 (Open court-case called-appearances noted.)

2 THE COURT: Good morning. Let's have the jury,
3 please.

4 MS. SELTZER: Your Honor, I have a matter before
5 Judge Garaufis at eleven. Could I just leave at eleven and my
6 co-counsel will cover and I'll be back by 11:30?

7 THE COURT: Yes. Do you want the jury advised that
8 you're doing that or not?

9 MS. SELTZER: No. I have a very brief
10 cross-examination, but from my understanding of the timing it
11 would be after your morning break. My client agrees.

12 THE COURT: That's all right with your client?

13 MS. SELTZER: Yes.

14 THE COURT: Get the jury.

15 (Jury present.)

16 JOHN FRANZESE JUNIOR,

17 called as a witness, having been previously duly
18 sworn, was examined and testified as follows:

19 THE COURT: Good morning. Please be seated.

20 Good morning, ladies and gentlemen. I hope you had
21 a good evening.

22 Mr. Paul, you may continue.

23 MR. PAUL: Thank you, your Honor.
24
25

J. Franzese - cross/Paul

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1 CROSS-EXAMINATION

2 BY MR. PAUL:

3 Q Sir, let me go back to where we left off yesterday. We
4 were talking about a couple of transcripts, specifically 136 A
5 and 136 B in the binder.

6 Turn to 136 A. It indicates -- you have it in front
7 of you?

8 A Yes.

9 Q It indicates this is a conversation that took place on
10 June 16, 2005; is that right?

11 A Yes.

12 Q Do you remember where this specific conversation took
13 place?

14 A Not right now. No.

15 Q Well, if you were to look -- withdrawn.

16 Do you remember having a conversation with John
17 Capolino in a restaurant?

18 A I don't remember, no.

19 Q You don't remember?

20 A I don't remember where.

21 Q Okay. So looking through this conversation, or this
22 transcript, it does not refresh your recollection as to where
23 the conversation took place.

24 This, may I remind you, is a conversation where in
25 the middle you get a phone call from your wife, Denise.

J. Franzese - cross/Paul

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1 A I don't remember where we were.

2 Q Okay. So would it be fair to say it was someplace in
3 Brooklyn?

4 A It's very possible.

5 Q You don't recall?

6 A I don't remember.

7 Q You don't remember therefore how this meeting got set up
8 or initiated?

9 A I don't remember the restaurant or exactly where this
10 conversation took place. I knew it was somewhere in New York
11 and that I went to meet John.

12 Q Do you remember how it came to pass that you had this
13 meeting with John?

14 A Probably had an appointment over a phone call.

15 Q So that would have been a phone call that you would have
16 made to him suggesting getting together and having this
17 meeting?

18 A Or vice versa.

19 Q But that's not recorded?

20 A I guess not.

21 Q Now, you testified yesterday that when you would have
22 these recorded conversations often, if not always, Agent
23 Lewicki would in advance tell you basically where the
24 conversation should go, right?

25 MS. NASH: Objection. Not the testimony.

J. Franzese - cross/Paul

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1 THE COURT: Overruled.

2 A No. He would tell me to record the conversation and keep
3 the piece in a place where it would be more clearer to pick
4 up.

5 Q Let's take the specifics of meeting John Capolino in
6 June, specifically June 16, 2005.

7 Is it your testimony that Lewicki on such an
8 occasion would not advise you in advance of meeting Capolino,
9 you know, you should kind of gear the conversation towards
10 this guy Mike the Butcher?

11 A Well, there was other information picked up on other
12 recordings like Flemmo and Michael Catapano talking about
13 their situation with John. So when --

14 Q I'm asking you about Agent Lewicki.

15 A That's why he would say, on this conversation keep the
16 phone on cause --

17 Q He would tell you that he would like you to continue
18 discussing with Capolino the loan he had with Mike the
19 Butcher?

20 A Yes, I would tell him I'm going to see John about the
21 loans with Mike the Butcher and he would say make sure you
22 record that.

23 Q Okay. Now, we had gone through this transcript
24 yesterday, I'm talking about 136 A, where there was discussion
25 about Anthony and later referred to the same person as Vincent

J. Franzese - cross/Paul

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1 Guardino, remember that?

2 A Yes.

3 Q And do you remember that Capolino tells you at this
4 meeting or this conversation that he had taken out this loan
5 with Mike the Butcher because he was gambling, remember that?

6 A Yes.

7 Q But he also tells you, does he not, that that wasn't the
8 only reason he needed the money; correct?

9 A I believe so.

10 Q Well, what's your understanding as to what -- let's zero
11 in on the specific mention in the transcript itself. Why
12 don't you turn to page 10 line 19.

13 A Okay.

14 Q Capolino says to you, but you know, I don't,
15 unintelligible, I got another year I'll be even.

16 He's referring to the loan with Mike the Butcher,
17 right?

18 A Yes.

19 Q And you say, Right. I know the pay down is a -- he says
20 yeah. And you say -- pain in the ass. And he says, Between
21 my family, my bills at home. And you say, I know.

22 You see that?

23 A Yes.

24 Q So in fact it wasn't just gambling that caused Capolino
25 to go and attempt to get a loan, he needed the money to pay

J. Franzese - cross/Paul

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1 for his family and the bills accompanying the upkeep of his
2 family, right?

3 A That's what he's saying.

4 Q Do you have any reason to believe otherwise, yes or no?

5 A No.

6 Q If you go to page 14, of that conversation, line 12, you
7 say, I know. So what happens, how is it when you see the
8 Butcher now?

9 Capolino says to you, I don't pay em. You say,
10 Oh, you don't see him? And he says, I don't go to
11 the neighborhood. I don't really stay in the neighborhood no
12 more.

13 And then you say, Then how do you pay him? You
14 gotta pay him. He says, I give it to Anthony.

15 Do you see that?

16 A Yes.

17 Q That's Anthony Flemmo, right?

18 A Yeah, I already knew that.

19 Q When we go to 136 B, which is the next transcript in the
20 binder, you see that that is a continuation of the same
21 meeting; is that right?

22 A I guess. I don't know how this reads like that, but if
23 you say so I believe you.

24 Q 136 A says June 16, 05?

25 A Right.

J. Franzese - cross/Paul

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1 Q 136 B says June 16, 05?

2 A Okay.

3 Q You've listened to the tape, right?

4 A Yes.

5 Q And you hear noise and eating and chewing and coughing
6 all taking place throughout both of these transcripts. Do you
7 remember that?

8 A Sometimes on the transcripts I heard that, yeah.

9 Q You mean on the audio?

10 A On the audio.

11 Q On 136 B, Capolino is now telling you how everyone owes
12 Mike the Butcher, right?

13 A Yes.

14 Q He mentions a guy by the name of Moosie owing him, right?

15 A Yeah.

16 Q Jimmy Rossotti on page two, is referred to as owing him?

17 A Yes.

18 Q And he goes on to tell you that his money in fact isn't
19 on record, remember that?

20 A I remember talking about that with you, yes.

21 Q Well, that was from the audio and the transcript, right?

22 I didn't just mention it, it was right in the
23 transcript?

24 A He said that, yeah.

25 Q And the loan that he had outstanding with Mike the

J. Franzese - cross/Paul

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1 Butcher was 20 thousand dollars; do you remember that?

2 A I thought it was -- I thought he ended up saying it was
3 more with the vig and everything.

4 Q Why don't we look back at 136 A, we go to page 3. If you
5 look at line -- starting at line 15, Capolino says, I no, 20
6 something thousand with him, 10,000 to Big Lou.

7 See that?

8 A Yes, I do remember that.

9 Q So in fact he had an outstanding loan of 20,000 with Mike
10 Virtuoso, Mike the Butcher, and another 10,000 with this guy
11 Big Lou, right?

12 A Yes.

13 Q For which he's already gotten down the loan with Big Lou
14 to about \$5,000. Do you see that?

15 A I don't see it, but I think I remember.

16 Q Go to page 3 of the same transcript right below where he
17 says, on line 15, I know, 20 something thousand with him,
18 meaning Mike the Butcher, 10,000 to Big Lou, and you say,
19 you're kidding? Are you even with Big Lou?

20 And he says, No, I still owe him about \$5,000. And
21 you say, yeah, but that's okay though, I mean. And he says,
22 Lou's good with me.

23 A I'm lost as to where you are. I don't know if you're in
24 136 B on page 3 --

25 Q Go to 136 A.

J. Franzese - cross/Paul

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1 A Okay.

2 Q And go to page 3.

3 A Okay.

4 Q Go to line 15. And he says, once again, I know,
5 responding to you, you say, All together from the previous
6 line, and he says, I know, 20 something thousand with him,
7 meaning Mike Virtuoso, 10,000 to Big Lou.

8 See that?

9 A Yes.

10 Q And you go, You're kidding? Are you even with Big Lou?
11 And he says, No, I still owe him about 5 thousand dollars.
12 And you said, Yeah, but that's okay though, I mean -- and he
13 says, Lou's good with me. And you say, Yeah. And Capolino
14 says, Me and Lou are very tight.

15 See that?

16 A Yes.

17 Q So it would be fair to say that he had originally a 20
18 thousand dollar loan with Mike Virtuoso, ten thousand dollars
19 with Big Lou, which, according to this conversation, he had
20 gotten down the outstanding loan with Big Lou to five thousand
21 dollars, right?

22 A That's what John says, yes.

23 Q You have no reason to believe he was lying to you, do
24 you?

25 A No. But I think other people were saying there was more

J. Franzese - cross/Paul

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1 money owed and stuff. I am I'm not sure.

2 Q Have we heard any recordings about that?

3 A No. But you're asking me -- I don't think he's lying, I
4 think that's what he's saying.

5 Q Okay.

6 You don't think he's lying, you think that's what
7 he's saying?

8 A Yeah. I think -- wasn't there other money also that he
9 talked about with vig and then it was knocked down to 20 and
10 so you're asking me to say is it only 20,000. I'm not sure.

11 Q I see. But clearly that's what he says in the
12 conversation, right?

13 A That's what he says here.

14 Q Okay.

15 Now, if you would again turn to 136 B, and here once
16 again Capolino doesn't tell you once but in fact he tells you
17 two times that the loan he has with Mike the Butcher isn't on
18 record.

19 Do you remember that in this conversation? If not
20 we'll go through it.

21 A Yes.

22 Q You do remember?

23 A I remember him saying it.

24 Q Not once but two times, right?

25 A Yes.

J. Franzese - cross/Paul

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1 Q So specifically, if you would look at page 3, line 22, he
2 says, But, ah, I know my money wasn't on record with him.

3 See that?

4 A Yes. My cousin's saying that.

5 Q Yes. Capolino?

6 A Not the Butcher.

7 Q Capolino is telling you that?

8 A He can't make a decision like that.

9 Q My question to you is, Capolino's telling you --

10 A He's saying it.

11 Q Listen to the question, okay, and you can answer. I'm
12 not going to stop you, you can answer.

13 The question to you is, when Capolino is telling you
14 this, it's his understanding, Capolino's understanding that
15 his money was not on record with Mike the Butcher.

16 Is that true?

17 A That's what he's saying.

18 Q All right.

19 And, in fact he says it again in the same
20 conversation with you, page 4 where he's talking first at the
21 top of the page about the old man -- meaning Joey Saunders --
22 wouldn't have wanted him to get involved in something like
23 this, right?

24 A Yeah. I remember that.

25 Q Because Joey Saunders was close to his father and he

J. Franzese - cross/Paul

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1 would be upset if he knew that Capolino was borrowing money,
2 right, getting himself in a hole; correct?

3 A Yes.

4 Q And he goes on to say at line 10, So, he goes, meaning
5 Mike the Butcher, he's quoted, yeah, all right. If it's not
6 on record it's just between me and you, end quote.

7 Do you see that?

8 A That's what he said.

9 Q That's what he's telling you that Mike the Butcher told
10 him when he went to see him and arrange this deal, right?

11 A Yeah, but obviously it wasn't true.

12 Q That was the understanding he had initially, John
13 Capolino with Mike the Butcher, and that's what he's telling
14 you; correct?

15 A That's what he's saying, yeah.

16 Q Okay.

17 And later in that conversation he goes on to talk
18 about the threats he was now receiving for not coming up with
19 the payments of whatever arrangement he had with Mike the
20 Butcher, right?

21 A Exactly.

22 Q All right.

23 And, in fact if you turn to page 4 of that
24 transcript, at line 16, Capolino says to you, I went to him on
25 my own. I said, quote, listen, I can't pay this fuckin' juice

J. Franzese - cross/Paul

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1 no more, end quote. I said, quote, Listen, let me give two
2 hundred a week, and it goes on. And he says, No, can't do it.

3 And you say, Just like that, and you had to go back
4 on other loans? And Capolino says, Yeah. He said, quote, no,
5 I can't do that, meaning Mike the Butcher is telling him that,
6 right?

7 A Yes.

8 Q And you say, No kidding?

9 See that?

10 A Yes.

11 Q Line 23. And then he goes on to talk about how he got
12 hot and there were threats being made, right, because if you
13 turn to the top of page 5, he says, He was making threats,
14 meaning Mike the Butcher, right?

15 A Yeah, I think that was later on.

16 Q Okay.

17 But later on meaning he was getting more and more in
18 the hole, he couldn't come up with meeting his responsibility
19 of paying this loan, and now there are being threats made
20 again, right?

21 A I would assume yeah.

22 Q Okay.

23 One of the threats he talks about is this incident
24 where he says he's been running a club, at the time he was
25 running a club, Capolino, and how he came in, Mike the

J. Franzese - cross/Paul

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1 Butcher, and made some threats to him in front of Big Lou.

2 See that?

3 A Yes.

4 Q And that basically Big Lou said to Mike the Butcher,
5 you're not going to touch this guy, leave him alone.

6 Right? Or words to that effect?

7 A Fairly so, yes.

8 Q And Capolino goes on to say, at the top of page 6 where
9 he's describing this incident with Big Lou, You ain't touching
10 this kid, and he goes on to say, This was before he got
11 button.

12 He's referring to Mike the Butcher there, isn't he?

13 A Yeah.

14 Q So at the time, would it be fair to say that Capolino
15 takes a loan out with Mike the Butcher, Mike the Butcher is
16 not a made man, to use your language, right?

17 A This was over a period of time though.

18 Q I understand that.

19 A The loan of 20,000 was accrued over time.

20 Q That may be so, but we are talking about certainly in
21 June of '05, long after this loan was taken out, he's talking
22 about an incident where Mike the Butcher, even in June -- he's
23 referring backwards to an incident that happened in this
24 club -- Mike the Butcher wasn't a made man at that time,
25 right?

J. Franzese - cross/Paul

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1 A That's what this is saying.

2 Q Okay.

3 That was June of '05. Turn to T-113. This is a
4 conversation between you and John Capolino on July 29, the
5 next month.

6 Do you have that in front of you?

7 A Yes.

8 Q Now, it's a conversation where Capolino is telling you
9 these threats that he was relaying to you in this June
10 conversation continued, right?

11 A Yes.

12 Q In fact, he says, on page two, line 4, he says, He came
13 to my fuckin' house.

14 Who is he referring to?

15 A Mike the Butcher.

16 Q Okay. Because you on the previous line started that
17 conversation by saying, I heard Mike, and then he responds, He
18 came to my fuckin' house.

19 Right?

20 A Right. But I had heard about that before I went there.

21 Q Okay.

22 A So we were concerned for him.

23 Q And it goes on to say, he says, About a month ago, and
24 you go, No kiddin, on line 7. He says, continuing, line 8,
25 'cause I was a little fucking late, bro. What the fuck? And

J. Franzese - cross/Paul

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1 you go, Right, I heard that.

2 And he goes, I ain't going nowhere. And you say,
3 What did Flemmo say? And the conversation continues, What, he
4 wants his money, that's what he said.

5 And you say, That's all Flemmo said? Capolino says,
6 Yeah. I can't fuckin' believe it. So you know what I did? I
7 went in on my own.

8 You go, You went to the Butcher yourself? And he
9 says yep.

10 Do you see that?

11 A At this time --

12 Q I'm asking you, do you see that?

13 A Yeah, I see that.

14 Q Is he telling you in this conversation that he himself
15 went into discuss with Mike the Butcher about his loan once
16 again? Yes or no?

17 A Yes. He did.

18 Q And he goes on to say, because you asked him, And what
19 did he say, meaning Mike the Butcher, correct? That's who
20 you're referring to, What did he say?

21 A Yes. And he said, I told him, listen, here it is. I
22 says, I can't give you fuckin' 6 hundred a month no more. And
23 you go, Right.

24 He says, I says, I gotta knock it down to 4 hundred
25 a month. And you say, What did he say? And Capolino says, No

J. Franzese - cross/Paul

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1 problem.

2 It continues the next page. Really? And Capolino
3 says, He did. And you say, You should have called me. I
4 would have went with you.

5 He says, He's like a fuckin' gentleman now. Yeah, I
6 know, you respond. And then it goes on, But, my wife got all
7 fucking freaked out. You say, Yeah, I know.

8 And he says, 12:00 o'clock at night, John -- talking
9 to you -- I was fuckin' sleeping. And it continues, Ya know
10 what I mean, cuz?

11 And you say, I don't like him. And he goes on to
12 say on line 12, I ain't going nowhere, where the fuck am I
13 going? He's getting my wife involved now. My wife's
14 hysterical, she calls my mother. So it's like a chain
15 reaction.

16 You see that.

17 A Yeah, he was concerned.

18 Q Right. He's describing an incident where he's being
19 bothered in the middle of the night and his wife gets upset,
20 according to him she freaks out and she calls John Capolino's
21 mother who also gets upset, and that's what he's describing as
22 a chain reaction, right?

23 A Yes.

24 Q You had said yesterday when I asked you some questions
25 with regard to a conversation between you and Michael Catapano

J. Franzese - cross/Paul

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1 which took place on August 1, 2005, which would have been
2 three days after, three days after the conversation you just
3 referred to, right, July 29?

4 A Yeah.

5 Q Okay. And in that conversation, I asked you do you
6 remember where you told Michael Catapano that Capolino had
7 told you that he went in to see Mike the Butcher on his own
8 and worked out his own deal for himself, and I asked you those
9 questions and you didn't recall that happening, even after I
10 showed you some documents.

11 Do you know, after reviewing these transcripts in
12 chronological order, does it now refresh your recollection
13 that on August 1, 2005 you did in fact have this conversation
14 with Michael Catapano about Capolino telling you that he had
15 gone in on his own to Mike the Butcher, yes or no?

16 A If there's tapes I probably had them. I don't remember
17 it at this point, what you're saying, but I do remember that
18 this was all because The Butcher was a goodfellow, so what
19 you're -- what you asked me before, that's why I didn't
20 understand what you were saying cause he said he wasn't on
21 record or he wasn't a goodfellow. He was a goodfellow here.

22 Q He said he wasn't not on record?

23 A He was a goodfellow here, if it's the same conversation.

24 Q But he wasn't a goodfellow, to use your words, when the
25 loan was taken out?

J. Franzese - cross/Paul

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1 A I'm not sure because he just might have been making a
2 mistake when he said that.

3 Q I see.

4 Now, the next conversation take place a month
5 later -- less than a month later, September 14, 2005, 125 C in
6 your binder.

7 This is a conversation where it begins, We're in
8 Queens, on page two, We're on our way to Queens.

9 Remember that, this is a time when you are driving
10 Capolino to Mike the Butcher's location so that he can make a
11 payment on this loan.

12 Remember that?

13 A Yeah, I think I do remember this.

14 Q You want to look at it so you do. I believe you also
15 testified -- well, you look at it first.

16 (Pause.)

17 A Yeah, I remember.

18 Q Okay. Now that's the same time that he I believe gets a
19 phone call while he's in the car with you after the fact from
20 Mike the Butcher saying that, You know what, you shorted me a
21 hundred bucks.

22 Remember that?

23 A Yes, I remember that.

24 Q Now I would like -- now, you were driving to Queens from
25 where, Brooklyn?

J. Franzese - cross/Paul

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1 A Yeah, I think -- yeah, because we had to go to The
2 Butcher's.

3 Q Where was that?

4 A Somewhere on either Graham or -- somewhere in
5 Williamsburg/Greenpoint. I'm not exactly sure, Lorimer or
6 Graham.

7 Q If we could play 125 A.

8 I will display to the jury the transcript which is
9 not in evidence. This is a continuation earlier of the same
10 conversation.

11 MS. POSA: Objection, your Honor.

12 THE COURT: Well, are you offering the tape?

13 MR. PAUL: I'm offering to play the audio and use
14 the transcript, yes, sir.

15 THE COURT: The objection is?

16 MS. NASH: This isn't a tape that is in evidence.

17 THE COURT: What about his position that it's part
18 of the earlier tape?

19 MS. NASH: If we can see it to determine whether
20 it's really necessary for completeness purposes --

21 THE COURT: That's what I understand the proffer to
22 be, right?

23 MR. PAUL: Absolutely, 106.

24 THE COURT: Why don't you take a look at it, Miss
25 Nash, and see if you agree.

J. Franzese - cross/Paul

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1 (Pause.)

2 MS. NASH: Judge, we don't concede that this is
3 necessary.

4 THE COURT: I want to know if you're objecting.

5 MS. NASH: We are willing to let him play it. We
6 don't have it to play.

7 MR. PAUL: It's part of what has been introduced,
8 125.

9 MS. NASH: That's not the point. We did not
10 introduce this so we don't have this as a recording to play.

11 As I said, I don't object to it -- I don't concede
12 that it's necessary but I won't object to it.

13 MR. PAUL: Your Honor, since we can't play it, with
14 your Honor's permission, I'll just use the transcript itself.

15 THE COURT: Any objection?

16 MS. NASH: No, Judge.

17 THE COURT: All right. Fine.

18 Q Now, this is earlier than what has been introduced by the
19 government as 125 C. This is the same date, September 14,
20 you're in the car.

21 THE COURT: Mr. Paul, I'm not following you. Are
22 you now about to show the jury -- I thought you said 106.

23 MR. PAUL: 125 C, your Honor, has been introduced.
24 I'm introducing 125 A and B, which is the same part of --
25 earlier part of 125 C.

J. Franzese - cross/Paul

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1 A All right.

2 MR. PAUL: I think we need the screen.

3 Q Let's read this together.

4 You say, Why? He don't like you bringing one in
5 here? Capolino says, No, I mean -- and you say, He, he, don't
6 care, does he? Capolino says, I don't, I mean I haven't been
7 in. My father's been bringing him money.

8 You say, Oh, you're kidding? And Capolino
9 continues, This is the first time I'm seeing this guy in, in a
10 year.

11 And you say, Oh, you're kidding? You told me you've
12 seen him.

13 No, my father goes in.

14 Oh, I told you Flemmo wouldn't care or nothing,
15 remember?

16 And he says, Capolino, About what? And you say, I'm
17 saying with the changing that you went there. Capolino says,
18 oh, I know.

19 And you go on to say, I mean, they weren't happy
20 about it. Then fuck it. I mean, that's why I want them to
21 know me and you, I've telling Michael. And he says, They
22 weren't happy about it?

23 And you say, And Flemmo, no, they weren't happy you
24 went there on your own.

25 And Capolino says, Why? And you say, Cause they

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1 thought you shouldn't have done that.

2 And then it continues about parking the car.

3 Back there it is, and you say, Where? Oh, where do
4 you want to park? Can you make a U-turn. Yeah, so, but I
5 want them to know you and me are close. I keep telling
6 Michael you helped me out.

7 You see that?

8 A Yes, I see it.

9 Q Does that refresh your recollection with regard to this
10 conversation you had with Capolino, yes or no?

11 Yes or no?

12 A It's a different conversation this is talking about than
13 what you are.

14 Q It's a different conversation than what I'm talking
15 about?

16 A This is referring to me going in to see the Butcher with
17 him, and he kept saying, No, I haven't seen him, because he
18 didn't want me to talk to the Butcher about his loans because
19 he hadn't been honest with Flemmo and Michael, which is why
20 they were upset that he went in there.

21 Q He didn't want you to go in but he's telling you, he
22 hasn't been going in, right?

23 A Yeah, but --

24 Q In fact, he's telling you -- in fact asked you, when you
25 respond, They -- meaning Michael and Flemmo, I suppose -- they

J. Franzese - cross/Paul

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1 weren't happy with you doing that. And he responds, Why? Why
2 weren't they happy?

3 He doesn't even know why they should be unhappy,
4 right?

5 A He does know.

6 Q Not according to this?

7 A He was supposed to be paying Michael and Flemmo. They
8 worked a deal out with the Butcher because they are both --
9 because Michael was a goodfellow and so was the Butcher, to
10 settle John's loan.

11 Q We have just gone through transcripts where he's telling
12 you, Mike the Butcher tells him initially it's not going to be
13 on record.

14 He then goes on to say he went in there and made an
15 arrangement on his own and then he went in there again and
16 said, I can't continue paying the 600 dollars, you gotta knock
17 it down to less.

18 Remember those transcripts and those conversations,
19 yes or no?

20 A No.

21 Q You don't remember that?

22 A I remember John saying that he thought it wasn't on
23 record.

24 Q Excuse me. Listen to the question.

25 You don't remember us just going through those

J. Franzese - cross/Paul

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1 transcripts and those conversations, yes or no?

2 A You said that Mike said it wasn't on record.

3 MR. PAUL: Your Honor, could the witness respond to
4 the question?

5 THE COURT: Mr. Franzese, you need to answer his
6 question narrowly. If the government thinks it's important
7 they will ask you more questions and let you expand later.

8 A Yes.

9 Q Do you remember us just going through those transcripts?

10 A That transcript, yes.

11 Q Do you remember us going through a few other transcripts?
12 We haven't been here that long.

13 A Why he.

14 Q Where John Capolino is telling you he arranged a deal
15 with Mike the Butcher, Mike the Butcher wasn't a made man at
16 that time, at least as far as he thought -- he negotiated a
17 deal that was better for him.

18 He went in there and told Mike the Butcher, I can't
19 continue paying you what you're asking, you gotta bring it
20 down to 4 hundred.

21 He was doing this all on his own and you were
22 telling Michael Catapano what Capolino know was telling you
23 and Michael Catapano wasn't happy?

24 MS. NASH: Objection.

25 THE COURT: Sustained as to form.

J. Franzese - cross/Paul

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1 Q Do you remember us going through all those series of
2 transcripts, sir, yes or no?

3 A The series of transcripts, yes. Not what you just said.

4 Q Not what I just said?

5 A No.

6 Q Okay. The transcripts and the audios are in evidence..
7 they speak for themselves.

8 A Yes.

9 Q Again, continuation of the same conversation, September
10 14, 2005.

11 Can you see that on your screen?

12 A Yes.

13 Q Capolino says once again, So, Michael got mad at me that
14 I went down on my own? And you say, Well, he was wondering
15 why you switched up without telling Flemmo, but you know what,
16 he didn't get mad. He -- and Capolino says, I told Flemmo, I
17 straightened it out for, I went in there, that's all. You go
18 on, All right. They're not mad like mad. And he says, I went
19 in there tried to get a better deal for myself.

20 Do you see that?

21 A I see that.

22 Q All right.

23 So once again, Capolino is telling you he made this
24 deal on his own, he went in there to see Mike the Butcher on
25 his own, he told Mike the Butcher at various times he couldn't

J. Franzese - cross/Paul

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1 pay it and he tried to work out a better deal for himself;
2 isn't that what he's telling you in these conversations, yes
3 or no?

4 A Yes, if the transcript -- it's what the tapes are saying.

5 Q Okay.

6 MR. PAUL: If I could have one minute, please,
7 Judge?

8 THE COURT: Sure.

9 (Pause.)

10 BY MR. PAUL:

11 Q Now, sir, is it fair to say that the best you can recall,
12 you don't have another conversation with John Capolino
13 concerning anything about his loan with Mike the Butcher until
14 some point in March, 2006?

15 A I don't remember.

16 Q Okay. Do you recall on March 22, 2006 where you placed a
17 telephone call -- not a recording, not a meeting -- a
18 telephone call to John Capolino and in that conversation
19 Capolino refers to --

20 MS. NASH: Objection. Hearsay.

21 THE COURT: Sustained.

22 Q Do you remember having a conversation with Capolino at
23 any time where you came to learn that the loan was paid, any
24 loan he had outstanding with Mike the Butcher?

25 A No, I don't recall.

J. Franzese - cross/Paul

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1 Q I'm going to show you two documents, JF 93 and RL 4, 3500
2 RL 4. (Handing.)

3 Look at both. Take your time. If you want, look at
4 this document as well.

5 (Pause.)

6 A Yeah.

7 Q Does that refresh your recollection of making a telephone
8 call on March 22, 2006 to John Capolino?

9 A Yes.

10 Q Does it refresh your recollection that you came to learn
11 that Capolino, with the help of his brother, had in fact paid
12 off the outstanding loan he had with Mike the Butcher?

13 A That's what it says there. If that's me, it must have
14 been said and done.

15 Q Let's put aside the transcripts for a minute, sir.

16 Did you ever come to learn that in fact this loan
17 was paid off with the assistance of Capolino's entire family
18 to Mike the Butcher?

19 A You know, until I saw that I didn't remember that, that
20 he started getting in trouble with Big Lou too. I didn't
21 remember any of that.

22 Q We just went through a transcript where he talks about
23 Big Lou?

24 A But here it says Big Lou's getting mad at him, but he
25 died somebody is looking for the money he owed.

J. Franzese - cross/Paul

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1 Q Sir, the question is, did you come to learn that he had
2 paid off whatever outstanding debt he had with Mike the
3 Butcher, with the assistance of his brother and his entire
4 family and his own money?

5 A If that's me there, yes. But I don't remember.

6 Q If that's you, meaning the person who made a phone call
7 to Capolino?

8 A Yes.

9 Q Do you know anybody else who was working with the
10 government recording and making calls for the government to
11 Capolino?

12 MS. NASH: Objection.

13 MR. PAUL: Withdrawn.

14 Q Now, if in fact this is you, as you say, this is March
15 2006, was that at or about the time, or shortly thereafter you
16 left New York?

17 A Very possible. I left in 2006, so it's probably close.

18 Q So whatever cooperation or whatever you were doing for
19 the government pretty much ended as far as recordings were
20 concerned; is that right?

21 A Fairly much.

22 Q And you had done this once before, you testified, back in
23 2001 where you tried to cooperate with the government but you
24 kept getting high so that didn't work out, right?

25 A No, that's not -- that was way back in 90 -- that was in

J. Franzese - cross/Paul

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1 the nineties.

2 Q You said at one time you went back to California in
3 September '01 and you were still high.

4 Remember that?

5 A I went to California not sober yet.

6 Q And that's when you told us you were living with your
7 brother, right?

8 A For three weeks, yeah.

9 Q Michael?

10 A Yes.

11 Q And you also said that after a few weeks you attended the
12 AA meeting, right?

13 A Yes.

14 Q And from the moment or that day that you went to that AA
15 meeting, as far as you are concerned or testified, that was
16 the end of your drugs or reliance on alcohol, right?

17 A Absolutely.

18 Q So that was an important date to you, correct?

19 A Yes.

20 Q And, in fact, you testified it was such an important date
21 that you tattooed it on your arm?

22 A Yes, I did.

23 Q And would it be -- that date was that, sir?

24 A 10/9/01.

25 Q And, in fact, the true and correct date that you went to

J. Franzese - cross/Paul

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1 the AA meeting which turned your life around was October 5,
2 2001, wasn't it?

3 A No. But a lot of people thought it was so I let them
4 believe I tattooed the wrong date on my arm.

5 I still tell people that cause people in California
6 thought I had the wrong date but I didn't.

7 Q So this is just a big joke?

8 A It just happened. The real date's on my arm.

9 Q It worked out that you tattooed this most important date
10 in your life, that you turned your life around, and word got
11 out it's not even the true date, right?

12 A It would have made me sober longer not shorter.

13 Q By a few days?

14 A What's the difference? It's one day at a time.

15 Q Sir, you were making a joke and actually lying to anybody
16 who ever saw your tattoo because in fact it's the wrong date,
17 right?

18 A It's the right date.

19 Q I see.

20 But you continued this joke with everybody out there
21 who asked you about it, right?

22 A I didn't want to bother telling them, I let them believe
23 it so I agreed.

24 Q You didn't want to bother telling them so you let them
25 believe that you made a joke about the most important date in

J. Franzese - cross/Paul

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1 your life, right?

2 A It's good to make jokes about important things.

3 Q I see. So this moment or this sobriety date that you
4 told us turned your life around, you think it's a good thing
5 to make a joke about that, right?

6 MS. NASH: Objection.

7 THE COURT: Sustained.

8 Q When you went to the Odessa program, this also was a
9 joke, or this was serious?

10 A Odessa was just a sober living house where a bunch of men
11 stood sober. It wasn't a program. So --

12 Q A facility for men to dry up, right?

13 A No. You dry up. You will just have a safe environment
14 to live while you're learning how to live sober.

15 Q Isn't that where you met with your current wife, Denise?

16 A Yes, I did.

17 Q So she wasn't living there, this is a facility for men,
18 right?

19 A It was a men's sober living home. It was not a facility
20 like accredited with any counselors or therapists, it was none
21 of that.

22 Q Excuse me. You met her there because she was working
23 there?

24 A She was one of the --

25 MS. NASH: Objection. Relevance.

J. Franzese - cross/Paul

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1 THE COURT: Sustained.

2 Q You told us the other day that you moved on in your life
3 and you were relocated; correct?

4 A Since when? I don't know what time frame you're talking
5 about now.

6 Q Well, you told us when you were receiving all this money,
7 this over 350 thousand, totaling 500,000, whatever the amount
8 was, this was after you were relocated and cooperating with
9 the government, right?

10 A I no longer live in my -- where I used to live.

11 Q Correct. That's because you left your wife behind,
12 right?

13 MS. NASH: Objection.

14 THE COURT: Sustained.

15 Q Did you leave your wife behind?

16 MS. NASH: Objection.

17 THE COURT: I will allow him to answer the question.
18 We have been through it, Mr. Paul.

19 MR. PAUL: I understand, Judge. With the court's
20 permission, just a couple of questions.

21 THE COURT: You can answer.

22 A Let's say that my wife chose drugs over me.

23 Q What was your -- your drug of choice was crack and then
24 shooting up cocaine, right?

25 A Yes.

J. Franzese - cross/Paul

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1 Q What was her drug of choice?

2 A It was pills.

3 Q What kind of pills?

4 A Whatever kind of pills.

5 Q And because she had chosen that life and you had moved
6 on, you couldn't relocate with her, is that your testimony?

7 A Let's just say it would not have been a life she would
8 have been able to succeed at because of her drug and alcohol
9 addiction and her child would be better off with her -- with
10 his real father than with a mother who is still using and me
11 wanted to move her far away.

12 Q So you made no attempt to straighten her out so she could
13 join you in your new life?

14 A You know, you remember a lot of my testimony except the
15 testimony that told you for about two years in our
16 relationship I tried to get her into a rehab and I told her
17 that if she did, within the next year I might have some money
18 put aside for us to go to.

19 She was never able to meet that and that was okay
20 with me, I understand.

21 Q So it was okay with you that you then moved on and
22 gathered together about five hundred thousand dollars that you
23 now don't even have to share with her?

24 MS. NASH: Objection.

25 THE COURT: Sustained.

J. Franzese - cross/Paul

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1 Q You're not sharing that money that we have been talking
2 about with Denise in any way, are you?

3 MS. NASH: Objection.

4 THE COURT: Sustained.

5 Q Talking about money. You told us earlier in your
6 testimony, you were very rich growing up, right? Remember
7 that testimony?

8 A Extremely rich.

9 Q You were living in Roslyn, I believe?

10 A Yes.

11 Q On Long Island?

12 A Yes.

13 Q And you were living at 47 Shrub Hollow Road?

14 A Yes.

15 Q That was your address?

16 A Yes.

17 Q That was where you and your family lived?

18 A Yes.

19 Q With all this money, right?

20 A Yes.

21 Q And that happened up until 2002, right?

22 A Yes.

23 Q Because in 2002 your father and your family that were
24 living in this life of luxury were in fact kicked out and
25 evicted for nonpayment on that mortgage on the house; remember

J. Franzese - cross/Paul

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1 that?

2 A Yes.

3 Q In fact, they are now no longer living that Roslyn house
4 as of 2002, they are living in a rental in North Port, Long
5 Island?

6 A Yes.

7 Q So in fact, at this time, your mother, who is at that
8 point, what, in her early seventies -- she's working, right?

9 A Yes, she always wanted to work.

10 Q She's working to help pay the rent on this house, right?

11 A My mother worked -- I don't want to discuss my family'
12 business, but we never really wanted my mother to work.

13 Q You don't want to discuss your family's business?

14 A Not their personal business.

15 Q What have we been doing for days on end?

16 A We're discussing organized crime.

17 Q This is personal. Right?

18 You don't want to talk about your mother because
19 that's personal?

20 A I'm not talking about my father as a man, I'm talking
21 about the life he chose.

22 MR. LIND: Judge, I move to strike that remark and
23 ask the jury to disregard it.

24 THE COURT: All right.

25 The motion is granted. The jury is instructed to

J. Franzese - cross/Paul

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1 disregard that remark.

2 Q Now, you testified earlier that one of the reasons you're
3 cooperating with the government is to turn your life around;
4 you told us that several times, right?

5 A I had already turned my life around. That's why, once
6 you're able to look over the -- this life absorbs you and you
7 only see one way, and when this thing happened to me in
8 California, I realized there was a whole world out there that
9 I missed with people that work and try to do the right thing
10 and actually followed other beliefs --

11 MR. PAUL: Your Honor, could the witness answer the
12 question?

13 A I'm answering the question.

14 Q You are?

15 THE COURT: Put another question and I'll have him
16 answer it narrowly.

17 Q At this point now in your life, you could possibly even
18 cash in on your name, right?

19 A I guess if you look at the way things were, that probably
20 could be true.

21 Q Well, sir, you told us about an attempt to work as a
22 consultant in some reality show, right?

23 A It wasn't an attempt.

24 Q Okay. You worked as a consultant in reality show, right?

25 A Yes.

J. Franzese - cross/Paul

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1 Q What background or experience could you possibly have had
2 as a consultant to a TV channel that was doing a reality show?

3 A Well, they were aware of my father's lifestyle and it was
4 about gangsters.

5 Q I see. So as I said --

6 A What they wore, how they talked, what it was like to talk
7 in Brooklyn and what do goodfellows look like and how do they
8 carry themselves at sitdowns. That was appealing to these
9 people in California.

10 Q Right.

11 A Okay.

12 Q So you were going to earn -- what did you say -- 15
13 hundred dollars a session or a week?

14 A That's what they told me I was getting paid.

15 Q How much?

16 A Fifteen hundred whenever we actually shot. I never got
17 to sit on the first shoot.

18 Q So there was an example that you were going to be table
19 to cash in on your name and your experience, right?

20 A Well, that's actually funny.

21 Q Is it?

22 A Yes.

23 Q I'm not laughing.

24 A Because that's not thousand that came to be. There was a
25 man whose life had fallen apart because he lost -- he was

J. Franzese - cross/Paul

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1 divorced from his wife, and a friend of mine who thought my
2 life had changed thought I might help him, and we became
3 friends for a year and he got better, and all of a sudden he
4 sold the show.

5 And when he sold the show he said, because of our
6 friendship and the things we were doing with each other in our
7 lives, that he wanted me to work with him because it would fit
8 right into the show. So it had more to do with the way I was
9 living than who I was.

10 Q It had nothing -- it had nothing to do with what you just
11 told us moments ago, with your background, your name, people
12 you knew or who were associated with, it had to do with this
13 life you turned around, redemption, right?

14 A It had to do with sharing certain principles with a
15 person who kind of felt broken in his life, that if I hadn't
16 had the experiences I did I wouldn't have been able to -- to
17 relate to him and help him identify with some of the same
18 things.

19 And we grew a great strong friendship out of that is
20 how, which is funny, because when I tried to do things usually
21 in my past and succeed, I always fail. That's why this life
22 is so important to me.

23 (Continued next page)
24
25

John Franzese - cross - Paul

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1 EXAMINATION CONTINUES

2 BY MR. PAUL:

3 Q I see.

4 Now you are gong to be a success story, right?

5 A Let's just say I live a very simple life but I am very
6 happy.

7 Q It is not so simple because you have attempted in your
8 own way to start writing a book, right?

9 A In --

10 Q Yes or no?

11 A No.

12 Q No?

13 A As of now? No.

14 Q Who is Steve Anderson?

15 A Okay. I'm glad you asked. Steve was a drunk that had
16 nowhere to live. He had left Odessa House and had no money
17 and I let him live in my apartment. That's part of the things
18 that we do. That's part of the work that we do when we go and
19 work in the sober living. He happened to be a kid who liked
20 to write.

21 And at that time I thought as my whole family
22 thought the -- the talking about my family as far as what it's
23 like to be the son of somebody who is in this kind of life,
24 the dealings with their mother, the personal relationships
25 between me and my sisters, and then of course being in

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John Franzese - cross - Paul

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1 Hollywood, you throw in some of the gangster garbage.

2 Q The gangster garbage?

3 A Yes. Because that's the marketing tool.

4 Q Oh. You talked about marketing your background, right?

5 A That was very early on, yes.

6 Q Do you remember with the assistance I suppose of this
7 person who could write, Steve Anderson, you attempted to write
8 the John Franzese Story, Family, Crime, Drugs, Redemption,
9 subtitled?

10 Do you remember that?

11 A You know, that's also a part of something I did in my
12 life that --

13 Q Just answer the question.

14 A That was therapeutic.

15 THE COURT: You have to answer the question.

16 Q You do remember that, right?

17 A I remember writing with Steve that.

18 Q Once again, sir, you were going to try to cash in on your
19 name, your background and who you were, right?

20 And it hasn't stopped there, has it?

21 Yes or no?

22 A That wouldn't have been a bad avenue at that time.

23 Q I see.

24 A It was in my thoughts.

25 Q That avenue is closed?

John Franzese - cross - Paul

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1 So when this case is over and the jury has made
2 their decision, that avenue can't be explored anymore?

3 A No.

4 Q Is that what you are saying?

5 A No. I signed an agreement never to write a book.

6 Q With who?

7 THE WITNESS: Can I answer?

8 THE COURT: Is there any objection from the
9 government?

10 MS. NASH: Can we have a brief either break or
11 side bar?

12 THE COURT: Let's take a side bar, please.

13 (Continued on next page.)

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John Franzese - cross - Paul

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1 (Side bar.)

2 MS. NASH: I am informed that I guess as a part of
3 the Witness Security Program he signs such an agreement. We
4 do not have such an agreement. My understanding is he
5 believes he signed one. We obtained the documents that I
6 provided to you from the marshals from Wit Sec. They tell me
7 that's all they have.

8 I have no objection to answering that he thinks --

9 MS. POSA: Sorry. We just spoke to the FBI agent.
10 The FBI agent just confirmed for us in the Wit Sec program he
11 is not allowed to write such books because it compromises his
12 security.

13 I think he needs to be instructed clearly.

14 THE COURT: Is that a written requirement of the
15 program?

16 MS. POSA: I don't know.

17 MR. PAUL: He said he signed an agreement. It
18 sounded like it is written.

19 MS. NASH: As I said, you have the documents that I
20 have from Wit Sec. To the extent he recalls that he signed
21 something else with Wit Sec, unless there is an issue from the
22 marshals that they don't want people testifying about their
23 policies, I don't really have an objection to him answering
24 it.

25 MR. LIND: Unless we see the written agreement,

John Franzese - cross - Paul

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1 Judge, I don't trust anything this guy says.

2 THE COURT: We know that to start out, Mr. Lind.

3 You can't get what doesn't exist. If the witness
4 thinks it exists, you can certainly flesh out that he thinks
5 it exists.

6 I will ask the government to make a further inquiry
7 of the marshals and the FBI and see if there is anything that
8 the witness might be talking about in writing that they know
9 about.

10 MS. NASH: Certainly.

11 THE COURT: For now get the witness' understanding
12 of what his obligations are. I don't see a security issue
13 with this.

14 MR. PAUL: I will do that, Judge.

15 However, I would also ask that once the government
16 pursues this line of investigation, that if in fact there is
17 no such document, I am going to ask for Your Honor to give an
18 instruction to the jury that there is in fact no such
19 document.

20 THE COURT: Let's deal with that after they have
21 done their search.

22 MS. POSA: He doesn't seem to understand that he can
23 talk about Wit Sec. He said can I answer this? I think he
24 needs to be reinstructed that he can in fact talk about it.

25 THE COURT: I don't know that he didn't understand

John Franzese - cross - Paul

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1 the instruction I gave him yesterday which is that he is
2 allowed to testify about the program, at least as a general
3 matter. I think he thought there might have been some
4 separate prohibition on him stating this.

5 If it comes out, I will reinstruct him, that he can
6 answer. For now let me just tell him, because he asked me if
7 he can answer this question. I'll tell him that he can.

8 MR. PAUL: That he can?

9 THE COURT: Can.

10 MR. PAUL: Yes.

11 (Continued on next page.)
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John Franzese - cross - Paul

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1 (In open court.)

2 THE COURT: All right. Let me have the reporter
3 read back the last question, please.

4 (Read.)

5 THE COURT: You may answer the question,
6 Mr. Franzese.

7 A With the government.

8 EXAMINATION CONTINUE.

9 BY MR. PAUL:

10 Q And this was an agreement that was written out and you
11 reviewed it and you signed it?

12 A Yes.

13 Q When did that take place?

14 A About two years ago.

15 Q Where did that take place?

16 Withdrawn.

17 Was your attorney present?

18 A No.

19 Q So it's your understanding that two years ago you entered
20 a written agreement with the government, or through the
21 government, that you were not permitted to write any book, is
22 that right?

23 A Yes.

24 Q Now, is it your understanding that that agreement also
25 limited you with regard to pursuing other avenues in Hollywood

John Franzese - cross - Colon

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1 as you have referred to?

2 A My life is so good I can assure you that none of you are
3 going to see me ever again anywhere.

4 THE COURT: Mr. Franzese, you have to answer his
5 question. He is asking about the prohibitions upon you that
6 you believe you are subject to.

7 THE WITNESS: Okay. Pardon me? Then I'm sorry.

8 MR. PAUL: Sir, you have answered my question.

9 Thank you.

10 THE COURT: All right. Mr. Colon?

11 MR. COLON: Yes, Judge.

12 Are we going to break around eleven?

13 THE COURT: Around eleven, yes.

14 MR. COLON: Do you want to advance that so we can go
15 through? Do you want me to proceed now?

16 THE COURT: I think we should proceed now. I'd
17 rather break so that we don't give the jury more time off than
18 they need.

19 MR. COLON: Very well.

20 CROSS-EXAMINATION

21 BY MR. COLON:

22 MR. COLON: One second, if I may, Your Honor? I am
23 just -- I will just organize my material.

24 THE COURT: All right.

25 Q Good morning, Mr. Franzese.

John Franzese - cross - Colon

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1 A Good morning.

2 Q I can't hear very well. So I am going to ask you to
3 speak up. Try to draw the mike closer to you, if you could.

4 A I can do that.

5 Q Thank you so much.

6 A You are welcome.

7 Q I -- you understand, I represent Mr. Joseph DiGorga,
8 correct?

9 A I do now.

10 Q Okay.

11 A I couldn't tell.

12 Q I was going to go right to Mr. DiGorga and look at the
13 tape but I want to carry -- to pick up on where Mr. Paul just
14 left off with respect to your -- we will call it, at the
15 attempt at a manuscript, the John Franzese Story.

16 Are you with me?

17 A Yes.

18 Q You testified just a few seconds ago on questions from
19 Mr. Paul that you didn't want to discuss your family, correct?

20 In front of this jury, right?

21 A Personal issues, as mother, father, son, children, aunts,
22 uncles.

23 Q Right.

24 But, in fact, the subtitle of the John Franzese
25 Story is, Family, Crime, Drugs and Redemption, correct?

John Franzese - cross - Colon

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1 A That was eight years ago.

2 Q That's the subtitle, correct?

3 A Yes.

4 Q And you discuss your family at length over there, don't
5 you?

6 A I don't remember that, what I wrote in there. He made a
7 lot of stuff up. I mean --

8 Q Who made a lot of stuff up, you or Mr. Anderson?

9 A Me and Mr. Anderson.

10 Q So that was back what, eight years or so ago, as you
11 tried this, this -- this effort that you --

12 A What you have is eight years ago.

13 MR. COLON: Your Honor, I am going to ask that this
14 document be marked for identification as defense Exhibit D, I
15 believe we are up to.

16 THE CLERK: D.

17 THE COURT: All right. We can mark it for
18 identification, certainly.

19 (So marked.)

20 MR. COLON: I am specifically referring to JF --
21 excuse me -- 3500 JF-8.

22 May I approach, Your Honor?

23 THE COURT: You may.

24 MR. COLON: I am showing it to the government. I
25 believe they are familiar with it.

John Franzese - cross - Colon

794

1 (Pause.)

2 Thank you.

3 Q Mr. Franzese, I am going to show you what's been marked
4 for identification as defense Exhibit D. It's not in evidence
5 but it has been marked so I just want you to take a look at
6 that and familiarize yourself with that.

7 Okay? Is that something that you -- that you are
8 partially responsible for?

9 Just take a look at it. Take your time.

10 (Pause.)

11 Have you seen that document before?

12 A Yes.

13 Q I don't believe Mr. Paul showed you the document but I
14 believe he may have waved it in front of you.

15 A He read the wrong thing from it. It doesn't say what he
16 said. It says from a loving devoted son to a mafia man to a
17 hopeless drug addict to a life of service to his fellow man.
18 Why did he read it -- something else?

19 THE COURT: Mr. Franzese, you have to just answer
20 the questions.

21 THE WITNESS: Okay.

22 Q I actually noted that the subtitle was the John Franzese
23 Story, Family, Crime, Drugs, Redemption, correct, just a few
24 seconds ago?

25 A Yes.

John Franzese - cross - Colon

795

1 Q And then when you flipped the page, you -- it indicates
2 as a subtitle from a loving devoted son to a Mafia man to
3 hopeless drug addict to a life of service to his fellow man,
4 correct?

5 A Yes. That's --

6 Q Which one did you write?

7 A I didn't write any of the titles.

8 Q I see.

9 But you are familiar with the document?

10 A I am familiar with -- with writing stuff like that, yes.
11 Steve putting it together.

12 Q Right.

13 I think you testified just a few second ago that it
14 was partially fact, yes?

15 A Yes. Some of the stuff is true.

16 Q And partially fiction, correct?

17 A Yes.

18 Q You collaborated with Mr. Anderson with respect to this
19 undertaking, this work, yes?

20 A Yes.

21 Q Okay. And about how long did you collaborate with
22 Mr. Anderson?

23 A He lived with me about four months I think. Maybe five
24 or six.

25 Q Back when?

John Franzese - cross - Colon

796

1 A In 2000 and -- well, I don't remember dates. I know I
2 was out -- it was probably 2002, now that I think of it.

3 Q You were sober at the time, right?

4 A Yes, I was.

5 Q Both of you were at Odessa House?

6 A We had lived at Odessa House first. Then I left because
7 I got my apartment finally and then about six months later
8 Steve I think wanted to move out and he had nowhere to go.

9 Q So getting back to the, let's say, not the nature but the
10 contents of that, the John Franzese Story, you -- as you
11 testified earlier, some of it was true and some of it was made
12 up, correct?

13 A Yes. I mean, that's how I write.

14 Q That's how you write?

15 A That's how I write.

16 Q So this is a work --

17 A Thank you.

18 Q So this is a work of fiction, right?

19 A Mostly it's a work of both.

20 Q Okay.

21 A Hey, I don't know what kind of work it is. I wrote stuff
22 down. Steve tried to make it into a story. We thought how we
23 would write it and that was just having fun together.

24 Q But you were sober at the time, right?

25 A Yes, I was sober.

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John Franzese - cross - Colon

797

1 Q So you collaborated with him over the time that he was
2 with you, that month or two?

3 A Yes.

4 Q You wrote about your father, Sonny Franzese, correct?

5 A I think I wrote about my dad, yes.

6 Q In fact, Mr. John Franzese, Senior, who is here, also
7 known as Sonny, you wrote about him as being a good father,
8 wasn't he?

9 A Yes.

10 Q He went to your baseball games, didn't he?

11 A Yes.

12 Q He participated in as much of your life as he could and
13 you appreciated that, correct?

14 A He was a great father.

15 Q He was a great father.

16 And for being a great father, you came here to
17 testify against him, correct?

18 That's the price he's paying, yes?

19 A No.

20 Q No?

21 A I am not here to testify because he's a great father.

22 Q You are an apparition?

23 You are not here testifying before him?

24 A I am here testifying that he is a member of organized
25 crime.

John Franzese - cross - Colon

798

1 Q I see.

2 You are a semi-expert on organized crime, aren't
3 you?

4 A I don't know. I have lived around it so long I just know
5 a lot about it.

6 Q You know a lot about the terminology that's used,
7 correct?

8 A They wanted to make me goodfella.

9 Q Yes or no, you know a lot about the terminology?

10 A Somewhat.

11 Q You know about points and loansharking, correct?

12 A I know, yes.

13 Pretty much I can get by pretty well.

14 Q You know about all sorts of schemes that are committed,
15 right, by the mob, yes?

16 A Yes.

17 Q Goodfella is somebody who is a made member, correct?

18 A Yes.

19 Q You are sure about that, right?

20 A I'm positive about that.

21 Q Okay. In that -- that John Franzese Story that was
22 written somewhere about 2002, you also mentioned how devoted
23 your father was to your family, right?

24 Yes?

25 A Yes.

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John Franzese - cross - Colon

799

1 Q You also spoke about Michael Franzese, didn't you?

2 A Yes, I did.

3 Q In fact, Michael Franzese is in this courtroom today,
4 isn't he?

5 A Yes, he is.

6 Q He's your older brother, correct?

7 A Yes, he is.

8 Q And Michael Franzese, he's written several books,
9 correct?

10 A Yes, he has.

11 Q In fact, he wrote -- do you know the names of those
12 books, by the way?

13 A No, I don't remember.

14 MR. COLON: Judge, may I just mark for
15 identification defendant's E? I will show it to the
16 government. Excuse me. I will make that defendant's E and
17 defendant's F.

18 May I approach, Your Honor?

19 (Marked.)

20 THE COURT: You may.

21 MR. COLON: Thank you.

22 Q So your brother Michael has written a couple of books.
23 You don't remember their names. Maybe this will help you out.

24 What's been marked for identification as defendant's
25 D, is that one of your brother's books?

John Franzese - cross - Colon

800

1 A Yes.

2 But I think I knew it under a different name. But I
3 think he was writing this while I was out there, reediting it
4 I remember.

5 Q Back in the early nineties?

6 A I don't remember the times.

7 Q Let's try to speak one at a time.

8 In the early nineties maybe?

9 A I don't remember.

10 Q Okay. What's the name of that book, by the way?

11 A Blood Covenant.

12 Q By Michael Franzese, right?

13 A Yes.

14 Q That was one of his first books, wasn't it?

15 A I think this was the reedited version.

16 Q Of the first book?

17 A Yes, I believe.

18 Q All right. That would have been somewhere about the
19 nineties, right, that first book, even if this is reedited?

20 A Probably, yes.

21 Q He also wrote, I am showing you what has been marked for
22 identification as defense Exhibit E -- excuse me -- F, rather,
23 for identification. Take a look at that.

24 A Yes.

25 Q Are you familiar with that book?

John Franzese - cross - Colon

801

1 A No. I've never seen it.

2 Q That's a recent book, perhaps, correct?

3 A Okay. Very good.

4 Q Did you read the first one, by the way, what's been
5 marked --

6 A No. I never read this one.

7 Q -- E.

8 You have --

9 A I think I read the other one.

10 Q Which one?

11 Something in-between?

12 A The first book that we were just discussing, this is the
13 reedited version, February.

14 Q What was the title of the first book?

15 A I told you, I don't remember.

16 Q You read the whole book?

17 A I'm fairly sure I did.

18 Q That book was written, will you agree with me, perhaps
19 ten years ago, maybe more?

20 A I don't remember. I just don't.

21 Q But you did read it?

22 A Yes. I read it.

23 Q Okay. Is there any mention of Joseph DiGorga in that
24 book?

25 A No. He -- no.

John Franzese - cross - Colon

802

1 Q Does your brother in that book, that first book you read,
2 does he turn on his father like you did and supply information
3 to the government about his father like you have in front of
4 this jury?

5 MS. NASH: Objection.

6 THE COURT: Sustained.

7 Q If you recall reading the book, is there any information
8 in that book about your father?

9 A Yes, I believe my father is mentioned in there.

10 Q I see.

11 Do you know whether Mr. Franzese testified against
12 his father, like you have?

13 MS. NASH: Objection.

14 THE COURT: Sustained.

15 Q If truth be told here, Mr. Franzese, you will agree with
16 me, that defense Exhibit D, the John Franzese Story, was
17 actually created after all these other books by Michael
18 Franzese, correct?

19 A It was -- we did it after my brother wrote his books,
20 yeah.

21 Q But you did it because, as Mr. Paul mentioned earlier,
22 you were looking to cash in on your father's coattails and now
23 on your notoriety, correct?

24 A At that time I guess I -- options.

25 Q Yes or no?

John Franzese - cross - Colon

803

1 A No, not what you said.

2 Q Because you have --

3 A Coattails and stuff like that didn't have anything to do
4 with it.

5 Q You have one more chapter to add to the Michael Franzese
6 story, because otherwise no one would buy your book, isn't
7 that true?

8 A What book are you talking about?

9 Q The book that you are going to write after you leave this
10 courtroom after you finish testifying.

11 MS. NASH: Objection.

12 THE COURT: Sustained.

13 Q There is one more chapter or one chapter would make a
14 distinction between what Michael Franzese has written in his
15 lifetime and what you wrote back in 2001 or 2002 with
16 Mr. Anderson, right?

17 A Can you repeat that?

18 Q Yes.

19 The difference between you and Michael Franzese is
20 that you are testifying against your father, correct?

21 A That's a difference, yes.

22 Q And as a result of that, you are able now to write a
23 different book that will sell because, quite frankly, no one
24 cares about your story, do they?

25 A I wouldn't say that.

John Franzese - cross - Colon

804

1 Q Let's talk about Joseph DiGorga.

2 THE COURT: Let's take a break as long as you are
3 transitioning.

4 We reconvene, ladies and gentlemen, at 11:13,
5 probably 11:15.

6 Please do not discuss the case amongst yourselves or
7 with anyone else. Keep an open mind.

8 We will see you at 11:15.

9 (The following occurred in the absence of the jury.)

10 THE COURT: All right. 11:15.

11 It should give you enough time?

12 MS. SELTZER: Otherwise, I will walk in quietly.

13 THE COURT: We can start without you?

14 MS. SELTZER: Yes.

15 THE COURT: Okay.

16 (Recess taken.)

17 THE COURT: All right. I will note, we are missing
18 some people.

19 MR. LIND: Yes. I'm sorry. I will get my client.

20 THE COURT: Okay. I will note we are missing
21 Ms. Seltzer who said we should proceed without her. Her
22 client has consented to that.

23 All right. Let's have the jury.

24 (Continued on next page.)

25

John Franzese - cross - Colon

805

1 (Jury present.)

2 THE COURT: All right. Be seated, please.

3 Mr. Colon, you may continue.

4 MR. COLON: Thank you, Your Honor.

5 EXAMINATION CONTINUES

6 BY MR. COLON:

7 Q Mr. Franzese, we started to mention at the end, we wanted
8 to start talking about Joseph DiGorga.

9 In your John Franzese Story, you didn't mention the
10 name Joseph DiGorga at all, did you?

11 A No.

12 Q Tell the jury about how long you have known Joseph
13 DiGorga?

14 A I think since about 1997.

15 Q That's about the time that you started to go to his adult
16 club near JFK Airport, correct?

17 A I think I went there to meet him, I have a feeling.

18 Q Okay.

19 A I knew him first and then he opened the club or something
20 like that. I am not sure.

21 Q You knew him as a family friend, correct?

22 A No, I didn't.

23 All of a sudden he was doing business with my
24 father.

25 Q Business, right?

John Franzese - cross - Colon

806

1 A Yes.

2 Q Okay. He wasn't the boss of the Colombo Family, was he?

3 A No.

4 Q He wasn't the underboss, right?

5 A No.

6 Q He wasn't a captain in the Colombo Crime Family, right?

7 A No.

8 Q He certainly wasn't a made man, right?

9 A No.

10 Q And so, therefore, if he wasn't a made man, he was not a
11 goodfella, correct?

12 A Correct.

13 Q But do you recall giving testimony just a couple of days
14 ago with respect to Mr. Joseph DiGorga and being asked this
15 question and giving this answer or these questions and these
16 answers?

17 I am referring to a transcript of June 10, 2010,
18 page 380.

19 Do you recall being asked this question and giving
20 these answers? Line ten, actually, page 380.

21 Question: What did you understand Michael Catapano
22 to mean when he said -- continuing on page four of -- line
23 three -- I said if you are telling me I got to give this
24 because I got to do this because I got to do it because it is
25 the right thing to do and I got to listen.

John Franzese - cross - Colon

807

1 Question, line 15: What did you understand that to
2 mean?

3 Answer: Oh, that Tommy had told him that because
4 Joe was a friend and helped him out collecting the 30, the 30
5 thousand, that it would be okay to lend him the ten thousand
6 because it wasn't Michael's money to lend out and if Tommy
7 said it was okay, then he could do it.

8 Answer: What do you mean by friend?

9 Question: What do you mean by friend?

10 Answer: Pardon?

11 Question: In the context of organized crime, what
12 do you mean by the term friend?

13 Answer: Well, generally, goodfellas who
14 are -- referred to themselves as friends.

15 Do you recall being asked those questions and giving
16 those answers on your testimony?

17 A Yes.

18 Q So you will correct the record now clearly for the jury
19 that a friend is not a goodfella necessarily, correct?

20 A I think it said generally in that. So sometimes they are
21 also like friends too.

22 Q I see.

23 But Joseph DiGorga was, as you said -- testified
24 earlier, is not a goodfella?

25 A No.

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John Franzese - cross - Colon

808

1 Q He is not a made member, correct?

2 A No.

3 Q You have known him for about, I don't know, 13 years or
4 so?

5 A Yes.

6 Q In fact, he's such a good friend of your family though
7 that at one time when your mother Tina's home went into
8 foreclosure, he actually extended his help and provided her
9 some \$10,000, did he not?

10 A I don't remember that.

11 Q I see.

12 The \$10,000 that Mr. Catapano was told to give him
13 by Mr. Gioeli, you remember that, correct?

14 A Yes.

15 Q You know where that \$10,000 is going?

16 That was going to help your mother, correct?

17 A No.

18 That was going to Joe DiGorga, for -- he need the
19 money.

20 Q Isn't it a fact that Joseph DiGorga assisted your mother
21 in pulling her house out of foreclosure on at least two
22 occasions while your father was in jail?

23 A No.

24 Joe bought the house after my mother got evicted and
25 then lived in it. Then my mother had to leave.

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John Franzese - cross - Colon

809

1 Q Joe bought the house?

2 A I believe so, something like that.

3 Q So you are making this up. You don't really know, do
4 you?

5 A All I know is my mother left the house. She never got
6 any help from Joe.

7 Q You don't know --

8 A I am positive she didn't get any help from Joe.

9 Q You believe she didn't get any help from Joe?

10 MS. NASH: Objection.

11 THE COURT: Sustained.

12 Q But you don't really know?

13 MS. NASH: Objection.

14 THE COURT: Sustained.

15 Q Your testimony today is that Joseph DiGorga did not help
16 your mother with respect to her foreclosure, that all he did
17 was buy the house from her?

18 A Yes.

19 The person that's currently living there got
20 to live.

21 Q Have you seen any documentation with respect to --

22 A No, I didn't --

23 Q -- any of your testimony here?

24 A I saw my mother leave the house.

25 Q Your testimony is that Joe DiGorga bought the house,

John Franzese - cross - Colon

810

1 correct?

2 A My testimony is he had something to do with the fellow
3 that bought the house now.

4 Q And your mother had to move after Joe DiGorga helped her
5 buy -- bought the house? Is that what you are testifying?

6 A No.

7 I'm saying, that the current resident, at 47 Trump
8 Hollow Road I believe, and Joe had something to do with buying
9 the house after my mother had left it.

10 Q When did your mother leave, what year, if you recall?

11 A I don't remember.

12 Q Is it five years ago?

13 A Once again, I don't remember.

14 Q In fact, Joseph DiGorga helped your mother with respect
15 to either foreclosure action or nonpayment on two occasions,
16 right?

17 MS. NASH: Objection.

18 THE COURT: Sustained.

19 Q In your -- didn't Joseph DiGorga help your mother when
20 she failed to pay rent later on?

21 MS. NASH: Objection.

22 MR. COLON: This is a different line, Judge.

23 THE COURT: Overruled.

24 A Once again, I don't remember.

25 Q I'm sorry?

John Franzese - cross - Colon

811

1 A I don't remember.

2 Q Okay. Fair enough.

3 Now getting back to '97, when you start having some
4 sort of a relationship or interaction with Joseph DiGorga,
5 that's as a result of a -- an establishment that he owned by
6 the name of The Airstrip, correct?

7 A That might have been the name, yeah.

8 Q That was the first name, over there by JFK?

9 A Yes.

10 I remember the place. The name I -- I don't
11 remember exactly.

12 Q You testified just a few days ago, I believe, you used
13 the name déjà vu, correct?

14 A Yes.

15 That's what I thought that was. I thought it was
16 the name of the place.

17 Q Joseph DiGorga, according to your testimony just a few
18 days ago, was actually -- was the owner of the establishment,
19 correct?

20 A Yes, he was.

21 Q Okay. He had formed a corporation, correct?

22 A I don't know what he did. I know he ran the place and he
23 told me he was the owner many times.

24 Q You had many discussions with Joseph DiGorga before you
25 tape-recorded those conversations in 2005, correct?

John Franzese - cross - Colon

812

1 A Probably so. But -- yes.

2 Q Especially between the period of 1997 when you started to
3 go to The Airstrip slash déjà vu, and -- hold on a
4 second -- and 2001 before you left for California, correct?

5 A Probably not as many as you think. I was still using
6 drugs so I didn't go there that often.

7 Q When you did go there, in fact, Joseph DiGorga had to
8 bail you out a few times when you stiffed cab drivers, right?

9 A Yes.

10 Q In fact, tell the jury -- I don't believe you testified
11 to this earlier, but you actually committed the crime of theft
12 of services by not paying those cab drivers when they took you
13 to The Airstrip or déjà vu, correct?

14 A If he paid them I didn't commit the crime. But I would
15 have. I didn't have money.

16 Q You failed to pay those cab drivers, correct?

17 A Are you saying Joe paid them?

18 Q I'm asking you. You failed to pay those cab drivers,
19 right?

20 A It's not a crime if he paid it on my behalf. That's the
21 truth.

22 MR. COLON: Move to strike.

23 THE COURT: Mr. Franzese, he is just asking, did you
24 pay the cab drivers?

25 THE WITNESS: No, I did not pay the cab drivers.

John Franzese - cross - Colon

813

1 Q You had no intention of paying those cab drivers, plural,
2 correct?

3 A Well, I was hoping Joe would lend me money.

4 Q Before you made -- or you undertook that thought process
5 of hoping Joe would lend you money, your intent was not to pay
6 them, right?

7 A No.

8 My intent always was to pay but I -- once I'm high I
9 end up never being able to do that.

10 Q Fair enough.

11 So when you left the cab did you tell those cab
12 drivers hold on, I intend to pay you. I am going to see if my
13 friend has money.

14 Did you tell them that?

15 A Generally that's what I would end up saying.

16 Q I see.

17 Only you and those cab drivers would know, right?

18 A No. Whoever I was asking for the money.

19 Q No. In terms of having told the cab driver that you were
20 going to come back and pay or have somebody else pay, right?

21 A If we were the only ones in the car.

22 Q Only you two would know, correct?

23 A Yes.

24 Q Right.

25 Your testimony is that your intent was to pay and

John Franzese - cross - Colon

814

1 that you would go into the club hoping to borrow money from
2 Joe, right?

3 A Yes.

4 Probably sometimes my intent was also not to pay.

5 Q Thank you.

6 And, in fact, cab drivers on more than one occasion
7 ran into the club to get you to pay, correct?

8 A Probably.

9 Q Yes.

10 And Joe had to put the money out for you, correct?

11 A Yes.

12 Because it was taking too long to pay.

13 Q You never paid Joe back any of that money, did you?

14 A No, I did not.

15 Q In fact, you actually owe Joseph DiGorga about, I don't
16 know, close to \$5,000 for money he gave you, meals he gave
17 you, drinks he gave you, when you were down on your luck out
18 on the street and you went to his club and you begged for
19 help, right?

20 You owe him about four to five thousand dollars,
21 isn't that a fact?

22 A I owe him about \$250 maybe. Any meals he gave me he gave
23 me while I was eating with my father or anybody else.

24 Q So your testimony is that you only owe him about \$250?

25 A Probably.

John Franzese - cross - Colon

815

1 Q Okay. When you were back there at Odessa, do you recall
2 that period between '01 and '05?

3 Do you recall that?

4 A I remember being at Odessa.

5 Q You were on the road to sobriety, do you recall?

6 A Yes.

7 Q One of the conditions of the program is that you redeem
8 yourself?

9 A It's not about redemption. I don't know what you are
10 talking about.

11 THE COURT: Let him finish the question.

12 Q It's not about redemption?

13 I thought you testified earlier that that was the
14 subtitle in your book, the John Franzese Story,
15 Redemption -- excuse me -- family, Crime, Drugs, Redemption.

16 Didn't you say it was -- aren't those your words?

17 A Are you referring to --

18 Q Aren't these your words?

19 A Excuse me. I don't understand what you are referring to.

20 Q I am referring to the --

21 A No. Steve wrote that. We already discussed that. You
22 said that Steve wrote the title.

23 Q With your concurrence, your acknowledgment, right?

24 A He just wrote it.

25 Q He gave you the name of the title too?

John Franzese - cross - Colon

816

1 A That was his -- this was all his.

2 Q I see.

3 So you had nothing to do with the word redemption on
4 that John Franzese Story, did you?

5 A I -- as far as hearing it and saying all right, write it.
6 Probably no.

7 Q Let me get back to the question.

8 With respect to your attempt at sobriety, between
9 '01 and '05, at the Odessa House, was it a condition -- wasn't
10 one of the conditions of your making amends for what you had
11 done to call up individuals that you had wronged or stolen
12 money from or robbed or assaulted or injured in any way,
13 wasn't that one of the conditions that they placed on you?

14 A Not at all.

15 Q Oh. So when -- do you recall a conversation that you had
16 with Joseph DiGorga from California in which you called him in
17 New York.

18 Do you recall that?

19 A Are you --

20 Q Yes or no?

21 A Are you -- I need to know if you are referring to this
22 being a condition of Odessa House because that's what I am
23 saying no to.

24 Q Yes.

25 A No.

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John Franzese - cross - Colon

817

1 Q Did you ever call Joseph DiGorga while you were in
2 California rehabilitating yourself?

3 A Quite frankly, I don't remember making that amends
4 process to Joe.

5 Q Did you do it to anybody?

6 A Yes.

7 (Continued on next page.)

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J. Franzese - cross/ Colon

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1 CROSS-EXAMINATION (Cont'd)

2 BY MR. COLON:

3 Q Tell the jury who you did it to?

4 A That is something that is a personal thing.

5 Q Well, tell the jury.

6 MS. NASH: Objection; relevance.

7 THE COURT: Sustained.

8 Q You don't recall making that telephone call to
9 Joe DiGorga?

10 A Personally I think I would have remembered making amends
11 to Joe but I didn't think I had to.

12 Q The \$250 you acknowledge was for what exactly that you
13 owed him?

14 A Probably for every -- because everyone knew not to lend
15 me known. So they, generally, wouldn't. That's why I say it
16 was only \$250.

17 Q Everybody knew because they knew you weren't going to
18 pay, right?

19 A They knew I was a junkie, yes. My father didn't want
20 them giving me money.

21 Q And Joseph DiGorga was aware you were a junkie, right?

22 A Yes.

23 Q And nevertheless, he lent you the money anyway?

24 A Yes.

25 Q And you are here to testify against him for gratitude for

J. Franzese - cross/ Colon

819

1 him lending money?

2 MS. NASH: Objection.

3 THE COURT: Sustained.

4 Q So it is only \$250 and yet, Joseph DiGorga allowed you to
5 come to that club how often, between '97 and 2001?

6 A I don't remember.

7 Q Well, did you go once a week?

8 A No. I probably only went when I was sober in between
9 those periods of time which, probably, wasn't a lot. I also
10 was in jail for one of those -- for a year, so I don't think I
11 spent a lot of time in clubs at that point. I didn't drink and
12 get high to go to clubs any more. Kind of isolated.

13 Q Between '97 and 2001?

14 A Between 1990 and 2001 I drank myself into complete
15 isolation. Unless it was very close to me being sober,
16 generally you didn't see me anywhere.

17 Q Why would you go to Joseph's club?

18 A Because he was friends of my dad's.

19 Q And there were girls dancing there, exotic dancers?

20 A Yes.

21 Q And you became friendly with them, correct?

22 MS. NASH: Objection.

23 THE COURT: Sustained. You want to give me a proffer
24 at side bar.

25 MR. COLON: Yes, Judge.

J. Franzese - cross/ Colon

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1 (The following took place at side bar)

2 THE COURT: He was friendly with the girls and that
3 shows what?

4 MR. COLON: We mentioned this earlier. This is
5 different from the issue of -- he is exposing women to HIV.
6 For example, this has to go to bis in light of the fact that
7 Joe DiGorga stopped him, impeded him, for having sexual
8 relationship. This is different. This is the reason why he
9 would be mad and take out his anger with Joe and revenge would
10 be and personal bias would be something that I think
11 Your Honor even noted on the record that bias is different
12 than what we had discussed earlier.

13 THE COURT: Well, if you want to ask him if
14 Mr. DiGorga stopped him from having sex with women without the
15 HIV thing comments coming out at all, that's fine if you think
16 that is a motive for bias.

17 MS. NASH: Judge, in light of the prior question I
18 think that that's incredibly prejudicial. They have already
19 heard now the question about intentional exposure. They are
20 going to understand when he makes that reference what he's
21 referring back to.

22 THE COURT: I don't think I allowed the prior
23 testimony in.

24 MS. NASH: He asked the question.

25 THE COURT: But I think he's allowed to ask whether

J. Franzese - cross/ Colon

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1 Mr. DiGorga stopped him from having sex with women who were
2 working in Mr. DiGorga's club, for which there could be a lot
3 of reasons for doing that. So I'll let you have just that
4 question. If you go anywhere near, Mr. Colon, the HIV part of
5 it, I'm not going to be pleased about that.

6 MR. COLON: I understand.

7 MS. NASH: Can I at least propose, rather than making
8 -- posing a question like stopped him from having -- stopped
9 him from having -- rather than, he stopped him from making
10 romantic advances or something? We have no idea if this was a
11 first date, whether this was intended to have sex the first
12 time he met her.

13 THE COURT: You can ask him if he tried to come at
14 some women there, if Mr. DiGorga stopped him.

15 MR. COLON: You are telling me I can't go any
16 further than say he attempted to have sexual relations with
17 any of these women?

18 THE COURT: There are ways to do that without saying
19 sexual relations.

20 MR. COLON: Becoming intimate with these women.

21 THE COURT: We could all think of a hundred
22 euphemisms. That is not problem. If the implication is that
23 Mr. DiGorga didn't want him approaching his employees, that's
24 fine. Okay. If the implication is Mr. DiGorga was protecting
25 his employees from HIV, that's not fine.

J. Franzese - cross/ Colon

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1 MR. COLON: Well, Judge, if I may respectfully,
2 that's the whole point to Mr. DiGorga's a concerns was, of
3 course, protecting his employees, but also, not wanting them
4 to contract this very serious and devastating application.

5 THE COURT: I'm sustaining the objection.

6 MR. COLON: You are saying I can't ask him the next
7 question, the question you alluded to?

8 THE COURT: You just identified by the proffer what
9 you intend to do it with it and what you intend to do with it
10 is improper and I am sustaining the objection.

11 MR. LIND: I realize Your Honor has sustained the
12 objection. I just want to chime in for a second. Your Honor
13 prevented questioning about him having sex with prostitutes.
14 These are, from what I can tell, not prostitutes and I don't
15 understand the basis for Your Honor's sustaining the
16 objection.

17 THE COURT: Let me explain it again. The question
18 asked whether these questions go to the witness' veracity and
19 truthful telling capacity, and since you can't find a single
20 woman he had sex with without testifying he had HIV, it all
21 irrelevant. That's the basis for my order. Did he try --
22 attempted perjury, attempted nondisclosure, that doesn't go to
23 credibility.

24 MR. COLON: If I may? Let me. I will -- stop for a
25 second. Judge, I don't want to mention the name of the

J. Franzese - cross/ Colon

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1 individual, but I have specific information with respect to a
2 woman who happened to be a bartender and if you want to limit
3 me, Judge, to at least not allowing him to come on to certain
4 employees, then I will have to live with that, but the jury
5 already knows he contracted --

6 THE COURT: Mr. Colon, at this the point I am not
7 allowing it all because I think it's quite clear what they are
8 trying to do. They are trying to show he was reckless in not
9 advising women he might give them HIV and that is not
10 acceptable because even if your bartender who you proffered to
11 me before -- he didn't have sex with her. We don't know what
12 would have happened. So it doesn't matter. It doesn't go to
13 his credibility. It might make him a bad person for even
14 thinking about it, but that doesn't mean he's not a credible
15 person. So I'm sustaining the objection. Move on to another
16 line of question.

17 (End of side-bar).

18 (Continued on next page)

19
20
21
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23
24
25

J. Franzese - cross/ Colon

824

1 BY MR. COLON:

2 Q So when we left off, you mentioned the issue of \$250.

3 Are your sure that is all you owed Mr. DiGorga?

4 A No, I am not. It's approximate.

5 Q He also let you eat there for free, even though your
6 father was not there; correct?

7 A Sometimes.

8 Q He didn't charge you?

9 A Probably not.

10 Q Did he charge you for drinks at all?

11 A I didn't drink.

12 Q Well, the entire period you went there between '97 and
13 2001, you didn't drink?

14 A No, I didn't drink. I didn't stay long there. I don't
15 think I spent a lot of time in there.

16 Q Now, you made the statement or you testified that at one
17 time you had a conversation with Joe, and you made mention,
18 you in your testimony, of a club that he shut down. You
19 recall that?

20 You testified just a couple of days ago.

21 A I don't remember it in that context.

22 Q Well, do you know whether -- do you have any personal
23 knowledge of Joe DiGorga shutting down any clubs in Manhattan,
24 yes or no?

25 A In Manhattan?

J. Franzese - cross/ Colon

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1 Q Anywhere.

2 A Shutting it down?

3 Q Yeah.

4 A Off the top of my head, nowhere in Manhattan do I know of
5 Joe shutting a club down.

6 Q How about any other place?

7 A Yeah, the one in -- I think it was in Lindenhurst or so.

8 Q When you say "shutting it down" you meant not in any
9 sense that he threatened it in way anyone. In fact, he shut
10 it down, the club, because it wasn't making any money or he
11 didn't have the proper finances, right?

12 A I don't think he even ever opened a club on Long Island.

13 Q So to the best of your knowledge, whether it is Manhattan
14 your any other part of New York City, New York State,
15 Joe DiGorga did not shut any club down, correct, in an
16 organized crime sense?

17 A In an organized crime sense, the word "shut" might seem
18 something different.

19 Q But do you know of him having shut any sort of club down
20 in an organized crime sense?

21 A Do you mean like take the key out of the door and get rid
22 of all the employees, send people home, don't pay the bills,
23 no longer occupied as an owner; is that what you are saying?

24 Q In an organized crime sense.

25 A Then I can't answer that -- that I would say, yes, I do

J. Franzese - cross/ Colon

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1 know a place if shut is in an organized crime sense, yeah.

2 Q So, really, what club was that that he shut down in an
3 organized crime sense?

4 A I would say shook down. It would seem like more that's
5 the worked to describe here than shut here.

6 Q Well, you testified just a couple of days ago, you're
7 saying that you're testimony is actually that he shut them
8 down or rather, that is he shook them down?

9 A In an organized crime sense he shook the club down. I
10 think what you are referring to in shut is the only club I
11 know that he physically no longer occupied the place he rented
12 and was not going to open the club that he began to open was
13 Long Island.

14 Q The club in Lindenhurst, correct?

15 A I believe it was Lindenhurst.

16 Q But you testified earlier that -- during your testimony
17 on direct that he needed a club in Manhattan, do you recall
18 that?

19 A When I came back and he was doing this he was already
20 involved in the Hustler Club. He already made his move on
21 there.

22 Q He made his move?

23 A Yes.

24 Q You mean he wasn't a consultant for the Hustler or Deja
25 Vue Corporation?

J. Franzese - cross/ Colon

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1 A That is was the result of the sit-down they had with them
2 guys from the Genovese Family.

3 Q You weren't at that sit-down, were you?

4 A No, but Joe told me.

5 Q But you weren't there?

6 A No.

7 Q So you had conversations, apparently, with Joe about his
8 activity with his clubs, correct?

9 A Yes.

10 Q Like the Hustler, for instance?

11 A Yes.

12 Q The Penthouse, correct?

13 A Many.

14 Q You also had conversations with respect to him and Joe
15 Toursto, right?

16 A Yes.

17 Q And also with respect to Cujini Due?

18 You had conversations involving with Cujini Due,
19 ,correct.

20 A Yes.

21 Q And you testified to that on your direct testimony just
22 couple of day ago last week, right?

23 A Yes, I did.

24 Q So we're going to go to some audiotape recordings and we
25 are not going to play them, Your Honor.

J. Franzese - cross/ Colon

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1 MR. COLON: I'm just asking that the jury draw its
2 attention to the March 30th, 2005, tape-recording and
3 specifically just note in their book.

4 THE COURT: Mr. Colon, you have to give us tab
5 numbers.

6 MR. COLON: 102 A, Judge.

7 Q Now, before I get into 102 A, you had numerous
8 conversations with DiGorga and with your father and numerous
9 conversations with Mr. Catapano, with respect to Joe DiGorga;
10 correct?

11 A Yes.

12 Q So outside of Joe DiGorga, let's just look at some of the
13 things that reference Mr. DiGorga. The reality is that many
14 times Joseph DiGorga didn't know what was going on, correct?

15 A I didn't feel that way.

16 Q But you had conversations with him where it was clear
17 that he didn't know what you were talking about, correct?

18 A I don't know what you are referring to.

19 Q Well, isn't it a fact that neither you nor Michael
20 Catapano, for instance, and sometimes even your dad fully
21 trusted Joe DiGorga, did they?

22 A There was -- we had suspicions sometimes.

23 Q That he wasn't a team player, right?

24 A There were more conversations, but yeah, that's what we
25 were saying.

J. Franzese - cross/ Colon

829

1 Q That he really wasn't, a, cooperating in the schemes that
2 you were trying to develop information on, right? Yes?

3 A No. He was cooperating. Sure.

4 Q But you mistrusted him, correct?

5 A Well, he always seemed to get the money and never --
6 sometimes some of the money wasn't paid back.

7 Q Get the money sometimes. Always seemed to get the money,
8 not pay back. He also attempted to stall and block your
9 efforts from moving on people, correct, yes or no?

10 A No, actually.

11 Q Well, that's why you didn't trust him, correct?

12 A One of the reasons he tried to stall was to keep us from
13 knowing how much money he was actually taking, because if we
14 got there, then the guys would tell us how much they gave him.

15 Q And in fact, at times Mr. Catapano and yourself even
16 threatened Joe DiGorga, did you not?

17 A No, I don't think we threatened him.

18 Q What kind of language did you use when you were upset
19 because you thought he was holding out on you?

20 A I don't think we threatened him. Can you show me where
21 maybe?

22 Q We'll, let's go to 102 A and referring to the issue of
23 Joe -- where Mr. Catapano, Sonny, and yourself were meeting on
24 about March 30th, 2005.

25 Do you recall that date?

J. Franzese - cross/ Colon

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1 A I remember here again.

2 Q Where did that meeting take place?

3 A Hold on (perusing). I don't remember.

4 Q And that meeting, essentially, if you are acknowledging
5 that it took place on March 30th, about what time of day did
6 it take place, if you recall?

7 A No, I actually don't.

8 Q So you don't remember where it took place, right?

9 A No.

10 Q And you don't remember what time of the day it took
11 place?

12 A No.

13 Q But you were wearing a recording device that day?

14 A Yes, only because I see the transcript.

15 Q How long did the meeting last in total -- not just
16 conversation on the tape, but in total, that meeting?

17 A I don't know that -- how long it lasted? Twenty minutes.
18 I don't know. I could say anything.

19 Q I understand. But it's your testimony that you only
20 recorded this part of the conversation?

21 A Pardon?

22 Q You only recorded this part of the conversation?

23 MS. NASH: Objection.

24 THE COURT: Witness can answer the question.

25 A I don't know.

J. Franzese - cross/ Colon

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1 Q So let's talk about 102 A. In that conversation
2 Mr. Catapano starts.

3 He called you right up, this Joe -- referring to Joe
4 D; is that correct? You are talking about page two at the
5 top.

6 A Yes.

7 Q Yes, referring to Joe D?

8 A Yes.

9 Q And Joe DiGorga is also known as Joe D, right?

10 A Yes.

11 Q And Sonny asks: What?

12 And Mr. Catapano says: He called you right up?
13 Joe.

14 And Sonny says: No. He didn't call up, no. He you
15 know, (unintelligible) he didn't say nothing about even no I
16 don't even know what he thinks about it. I haven't seen him
17 yet.

18 Do you recall that on the tape?

19 A Yes.

20 Q Would you like some water?

21 A I'm okay. Just yawning.

22 Q So do you recall that on the tape?

23 A Yeah.

24 Q There's a question. Do you recall that?

25 THE COURT: He said yeah.

J. Franzese - cross/ Colon

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1 MR. COLON: I'm sorry.

2 THE COURT: I believe he said yes.

3 MR. COLON: It is difficult for me to hear if he
4 doesn't talk into the mike. I wouldn't be able to hear him.

5 THE WITNESS: Sorry.

6 Q So at that point your father doesn't even know what you
7 are talking about or what the conversation is about, correct?

8 A At that point, yes, at that time point.

9 Q Yes. Well, what was the subject matter at that point?

10 A The subject matter was after me and Michael had seen Joe
11 or questioning him about the money, we had thought he had
12 called my father right up.

13 Q And in fact, you overreacted and your father admonished
14 you. He tells you in the next line:

15 Yeah, John ahh, John told me something. I told John,
16 I says, you shouldn't have went, you shouldn't have went that
17 far with him, I said.

18 Do you recall that?

19 A That's what he said here.

20 Q And Catapano says: Well, we were just, you know, we were
21 just asking him general questions about the place?

22 Correct?

23 A That's what Michael said.

24 Q And right?

25 And further down on line 19 page two he says: Yeah,

J. Franzese - cross/ Colon

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1 I know. I know. I know. I think so.

2 And Sonny says: Huh?

3 And Catapano says: You know, he says I think so. I
4 says, you know, it's not right what he did. He's, like, I know
5 I know. And I told him about ahh and he was complaining about
6 Toursto.

7 Right? You got that?

8 A That's what you're referring to in the transcript, yeah.

9 Q There's no mention about Hustler whatsoever, correct?

10 A In that sentence that Michael is saying, no.

11 Q From line -- all the way down to line where Catapano says
12 line 25, no mention about Hustler is there? Yes or no?

13 A No. Not the word Hustler.

14 Q And there's no mention about the Penthouse either, right?

15 A No.

16 Q And there's no mention about Toursto until the very next
17 line when he's complaining about Toursto?

18 And Sonny says: So why don't he go looking for em?
19 I told em point blank.

20 Catapano says: That's what we told em. Yo, right?
21 Didn't we tell him?

22 And you say -- you chime in: Absolutely.

23 And Catapano says: Go get em.

24 And Sonny says: Go get em.

25 And Catapano said he says he's home. I said, well

J. Franzese - cross/ Colon

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1 why ain't you waiting for em?

2 And Sonny says: I told em I'd go with him.

3 Catapano: Right.

4 You say: Yeah.

5 Sonny says: Mike, I told em to go with him.

6 Catapano: That's well, we told 'em the same thing.

7 Joe, you want help? We'll come help ya.

8 Sonny says: Sure. You don't wanna move.

9 Do you recall that?

10 A I recall seeing it, yeah, right here.

11 Q You don't wanna move, talking about who Joe D, right?

12 A Yes.

13 Q Meaning Joe D doesn't want to move, he doesn't want to
14 take any action, right?

15 A More like lazy.

16 Q Lazy?

17 A Yeah.

18 Q He doesn't want to take any action. You're the one who
19 that's pushing the action, aren't you?

20 A No. I don't think I'm pushing it. I'm -- we're just
21 doing what -- talking about the subject. Asking him why he's
22 so lazy.

23 Q I see.

24 And this is about a guy who owes him a significant
25 amount of money, Mr. Toursto, right?

J. Franzese - cross/ Colon

835

1 A Yes.

2 Q In fact, he's owed him the money for, like, three years,
3 doesn't he?

4 A I believe it is somewhere like that. It could be longer.

5 Q And Joe D who shakes people down, he doesn't go after a
6 guy for three years. At that point you understand that to be
7 the facts right?

8 A Yes.

9 Q And it's only you and Mr. Catapano that are pushing Joe
10 to go get it, right?

11 A Yes.

12 Q Joe DiGorga has no interest in going after anybody,
13 especially Mr. Toursto, right?

14 A That's not true. No interest in anybody? I mean --

15 Q Not interested in Mr. Toursto, is he?

16 A No, because Michael gave him the \$14,000 that Toursto
17 owed him, so why should he care about going -- chasing the guy
18 for money that Michael already gave him.

19 Q Michael gave him \$14,000 -- lent him \$14,000; right?

20 A Well, it was because of the loan for Toursto.

21 Q Michael Catapano loaned to Joe DiGorga \$14,000; yes or
22 no?

23 A Yes.

24 Q So going to line 11 page three:

25 Sure: He don't want to move.

J. Franzese - cross/ Colon

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1 Catapano says: No, no.

2 And then you say: He said he ran into him at the
3 train station.

4 And Sonny says: I mean, ya know what I mean Joe?
5 What? The guy owes you money --

6 THE COURT: Mr. Colon, the reporter is not going to
7 be able to get it, as good she is. You've got to slow down.

8 MR. COLON: I'm sorry.

9 Q Sonny I says: I mean ya know what I mean Joe? What?
10 The guy owes you money, go look for him.

11 You say: Yeah.

12 And Catapano says on line 18 I told em about the ahh
13 about those guys over there with, unintelligible, the guy in
14 Michigan, Jim, that you should meet 'em.

15 That's a different subject. We are done with Mr.
16 Toursto, do you remember that, that conversation, those
17 statements made by yourself and --

18 A Yes.

19 Q Mr. Catapano?

20 A Yes.

21 Q And now going back to Mr. Toursto, for a second,
22 Mr. Toursto is actually a nephew of yours; isn't he?

23 A No, that's incorrect.

24 Q I'm sorry?

25 A No, he beat a nephew of mine out of money.

J. Franzese - cross/ Colon

837

1 Q So Mr. Toursto is not nephew, he beat a nephew of yours?

2 A Yes.

3 Q He didn't beat him physically, right?

4 A Right.

5 Q What you are referring is with respect to that situation
6 with Mr. Toursto where he rents Mr. DiGorga's club, correct?

7 A Yes.

8 Q The club at the Air Strip, correct?

9 A Yes.

10 Q And in that situation your nephew agrees to be the, what,
11 videographer?

12 A I believe so.

13 Q What is your nephew's name?

14 A I don't remember which nephew.

15 Q Okay. But you do recall that Mr. Toursto entered into an
16 oral contract with Mr. DiGorga to rent out the space to have a
17 video recording or performance of women modeling underwear?

18 A Yes.

19 Q And your nephew was given a bounced check -- a check that
20 bounced by Mr. Toursto, right?

21 A Yes.

22 Q Maybe 3 or \$4,000?

23 A I think Joe says it was 4900 or something. I am not
24 sure.

25 Q Forty-nine hundred.

J. Franzese - cross/ Colon

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1 Mr. Toursto bounced a check on your nephew?

2 A Yes.

3 Q He also bounced checks with respect to the two young
4 ladies that performed in the video, right?

5 A Yes.

6 Q And he never paid Joe DiGorga back, did he?

7 A At this point, no.

8 Q You're talking about all that money that was owed to
9 Joe DiGorga, your nephew, and the two young ladies when you
10 talk about Joe Toursto, right?

11 A Plus the 16,000 I think that -- are you saying that's all
12 the money that we are talking about with Joe Toursto?

13 Q Well, you didn't see any sort of loan between Joe DiGorga
14 and Joe Toursto, did you?

15 A Every time I --

16 Q Did you see a loan -- any sort of --

17 A I did see a transaction, no.

18 Q But you are aware of all the money that Joe Toursto owed
19 those individuals after he stiffed them with respect to that
20 video recording performance at Joe D's club?

21 A I am aware of those individuals and others, too.

22 Q There's \$14,000 that Mr. Catapano gave to Joe D. Isn't
23 it a fact that that money was used to help your mother with
24 either her mortgage or non-payment or her relocation?

25 A No.

J. Franzese - cross/ Colon

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1 Q Are you saying that, once again, that Joe had nothing to
2 do with helping your mother out while your dad was in jail?

3 MS. NASH: Objection.

4 THE COURT: Sustained.

5 Q Now, moving on to that same 102 A. When you talk about
6 -- or Mr. Catapano talks:

7 I told 'em about the ahh those guys over there with,
8 (unintelligible) you know, ahh, the guy in Michigan, Jim that
9 you should meet him, you know.

10 You remember that.

11 A Yes.

12 Q That's Mr. Catapano pushing that, correct?

13 A He's bringing up the subject.

14 Q And he happens to be a captain, doesn't he happen? He
15 happens to be a captain, isn't he, in the Colombo Family?

16 A Yes.

17 Q And he says or actually you say: Grant. That's you
18 talking about Michael Grant or Anthony Grant?

19 A I don't know the first name.

20 Q In fact, you don't know any of the individuals up in
21 Michigan, do you?

22 A No.

23 Q And Mr. Catapano says: No, no, that was the other two
24 guys in Connecticut?

25 You say: I got all confused.

J. Franzese - cross/ Colon

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1 Mr. Catapano says: You should meet him but --

2 And then you say: I don't know what he was talking
3 about, but I told him about.

4 Catapano says: I told him about the other thing
5 that you did for him with Springfield that does him a favor
6 and they don't even do anything for him. I said that's not
7 right at all.

8 You recall that, right?

9 A Yes.

10 Q That had to do with, let's say, the Grant brothers and
11 Hustler Club being shaken down by some Genovese made guys up
12 from Massachusetts, right?

13 A Yes.

14 Q And you wouldn't know who those Genovese people were,
15 would you?

16 A No, I wouldn't.

17 Q You have no firsthand knowledge, you weren't there?

18 A I wasn't there.

19 Q And essentially, what Mr. Catapano is referring to is the
20 fact that Joe DiGorga may have done the Hustler Club a favor
21 by getting the Genovese crew off their backs, right?

22 A Yes.

23 Q A favor, right?

24 A We -- that was the deal we made with them.

25 Q Joe DiGorga may have done them a favor, correct?

J. Franzese - cross/ Colon

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1 A It was a business deal.

2 Q But you didn't participate in that business deal, did
3 you?

4 A No, but later on they're talking about it.

5 Q In fact, you also know therefore -- well, strike that.

6 What you're saying is that you were part of this
7 deal and you are very familiar with the facts with respect to
8 those guys up in Massachusetts, right?

9 A I'm -- I know that -- I know, I've been told, and I knew
10 of what happened up there, and why we were in the Hustler Club
11 because of it.

12 Q So you would know, therefore, that it was actually the
13 FBI that got the Genovese members off the Hustler's back when
14 the individuals up in the Genovese crew encountered some FBI
15 business cards that were provided to them by one of the
16 Hustler owners, right?

17 A No, I wouldn't know that.

18 Q You didn't know that?

19 A No. I knew that they met them. All I knew is that they
20 were met by two guys, Tommy and Michael here, went to see
21 them.

22 Q So you had no idea that the FBI --

23 MS. NASH: Objection.

24 THE COURT: Sustained.

25 Q Now, going back further down to line five:

J. Franzese - cross/ Colon

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1 Sonny says: They're gonna do something for me I. I
2 ain't worried about that, Michael.

3 And John, you say: That's not what he said.

4 Sonny: Huh?

5 Catapano jumps in and says: He says he don't trust
6 'em.

7 And you say: That's why he ain't gonna get anything.
8 He don't want to approach them with nothing.

9 You recall saying those words on that recording,
10 right.

11 A Yes.

12 Q Those are your words, right?

13 A Umm-Humm.

14 Q When you say: He ain't gonna to get nothing. He don't
15 want to approach them with nothing, you are referring to Joe
16 D; right?

17 A Yes.

18 Q And then as we go a little bit further down on 102 A:

19 Sonny says: He don't trust 'em, then why did you
20 bring us into it?

21 And you say: That's what I said to 'em.

22 Catapano: Well, yeah, yeah.

23 You say: I said that to 'em.

24 And Catapano says: That's what he said.

25 Sonny said: Don't trust 'em. You know, that's the

J. Franzese - cross/ Colon

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1 game of a beekeeper.

2 Catapano says: Yeah.

3 You say: Yeah.

4 Catapano says: Yeah that what we went right into
5 that.

6 Sonny says: Yeah.

7 And then Catapano essential threatens or admonishes
8 Joe and says: And ahh I told him, meaning by who by the way,
9 Mr. Franzese? Mr. Franzese, when he says I told him, who?
10 Joe D?

11 A Yes.

12 Q And I told him: And ahh, I told 'em don't lie. I said
13 whatever you do, I said, 'cause you know the, unintelligible.

14 And Sonny says: You run out of options.

15 Catapano says. I says you know what happens Joe,
16 then your credibility is going to be shot, and you don't have
17 no -- you're on the shit list. He's like, no, I never knew.

18 You recall that conversation going that way and even
19 repeating to Mr. Catapano and your dad that Joe said he never
20 knew, you recall that going that way, correct?

21 A That's what it was said here.

22 Q Yeah.

23 And with respect to the issue of Joe's stalling and
24 Joe wanting to keep everybody at bay, your father's quoted as
25 saying on line three:

J. Franzese - cross/ Colon

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1 What'd he, and what'd he say about the club?

2 Catapano: He says ahh what he said about two
3 weeks, right, he was saying?

4 Sonny: Yeah. Two weeks.

5 Catapano: About two weeks he should have everything
6 done.

7 He's talking about what? The Hustler Club or the
8 club in Lindenhurst, which one?

9 A At this point he's talking about, I believe, the club in
10 Lindenhurst.

11 Q I see.

12 And Catapano says: About two weeks he should have
13 everything done.

14 Sonny says: He got the rest of the money.

15 Catapano: Yeah, that's what he told me.

16 Sonny: You know, yeah, he got the rest, he got the
17 rest of the money on account of me.

18 Catapano: Of course, anything he gets is cause of
19 you.

20 Franzese says: Yes.

21 Sonny says: Yes, he then he goes in there and tell
22 -- he goes and talks and tells him, you know, Sonny get some
23 money over here. And I know what he's doing.

24 Catapano says: Of course.

25 Sonny says: That's why he don't want me to meet

J. Franzese - cross/ Colon

845

1 nobody.

2 Catapano: No, because then, I, then, then they can
3 cut him out and come right to you.

4 Sonny says: Yeah, but he should realize I don't do
5 them things.

6 You remember the conversation going like that,
7 right.

8 A I remember this conversation.

9 Q Meaning that Joe wanted to keep everybody at bay. He
10 wanted to keep you guys away from anybody he was doing
11 business with in general, right?

12 A That he was benefitting from the -- 'cause of the favors
13 that were done for him because he was around us.

14 Q So you thought that Joe D was cheating your crew, that's
15 what you're telling the jury?

16 A Joe D was getting money from them guys.

17 Q And when people in your line of business or former line
18 of business, when people don't pay, what happens to them?

19 A Eventually they end up getting hurt.

20 Q You didn't hurt Joe D, did you?

21 A No.

22 Q But the bottom line is if he was going to continue to
23 hold back on those in The Family, that he was going to get
24 hurt, right?

25 A I seen that to be the end result of things in my life,

J. Franzese - cross/ Colon

846

1 yes.

2 Q So your testimony is that Joe D wasn't going to be immune
3 to that, he too would have gotten hurt eventually, right?

4 A I guess he would have been subject to that to. So would
5 have everyone else. All of us.

6 Q We are talking about Joe D here specifically?

7 A Okay, but I think that applies to all of us.

8 Q I'm talking about Joe D specifically.

9 A Yes.

10 Q Now, by the way, did Mr. Catapano ever get any money from
11 Hustler?

12 A Not at the time I was there in New York that I know of.

13 Q Not at the time while you were recording the
14 conversations?

15 A That I know of, no.

16 MR. COLON: Judge I'm going to move on to 103, if I
17 may, for a second.

18 THE COURT: You may and you may take more than a
19 second.

20 Q And specifically, turn to Exhibit T 103.

21 Do you have that, Mr. Franzese?

22 A April 5th?

23 Q Yes.

24 A Okey dokey.

25 Q Once again, you participated in that conversation with

J. Franzese - cross/ Colon

847

1 Mr. Catapano, right?

2 A Yes.

3 Q Would you tell the jury where that conversation took
4 place?

5 A I don't recall where it was taking place.

6 Q Do you know what time of day it took place, by the way?

7 A I don't know offhand. Do you want me to read the
8 transcript and try to figure it out?

9 Q We will read it in a second. I'm just wondering if you
10 know at this point by looking at the date, April 5th, if you
11 know where it took place.

12 A No, I don't recall.

13 Q And you were wearing a recording device at that time,
14 yes?

15 A Yes.

16 Q And you recall when you turned that on April 5th with
17 respect to yourself and Mr. Catapano.

18 A No, I don't.

19 Q Do you recall whether Agent Lewicki, was nearby in the
20 vicinity?

21 A I would assume if it was during the day, I would think
22 very much that he was nearby.

23 Q You don't know where he was at that particular moment on
24 April 5th when you were recording this?

25 A No.

J. Franzese - cross/ Colon

848

1 Q Did he give you instruction when to turn it on that day?

2 A Once again, I don't recall specifically.

3 Q Do you recall meeting with Agent Lewicki that day before
4 this meeting with Mr. Catapano on April 5th?

5 A No, I don't recall meeting with him but i may have turned
6 the thing on, so I don't remember it, no.

7 Q And he had provided some general instructions with
8 respect to the operation of the recording device, yes?

9 A Yes.

10 Q He also provided you, let's say, in general, with either
11 suggestions or recommendations as topics you should talk
12 about?

13 A Sometimes we covered some of the stuff we had gone over
14 from before each meeting.

15 Q Okay. And how often would you meet with Agent Lewicki
16 with respect to these recordings or prospective recordings
17 that you were going to tape?

18 A Sometimes for a short period of time, and others for a
19 little bit longer.

20 Q Did you meet with Agent Lewicki just before every
21 recording that's in evidence here, if you can tell the jury?

22 A I don't remember if every recording in evidence. If I did
23 meet with him before the meeting, it was generally quick. We
24 turned it on and I went on my way. If -- I don't know. I mean
25 I'm not sure.

J. Franzese - cross/ Colon

849

1 Q And at all times when you were recording your father, and
2 your cousin and your family friend, did you do that with the
3 authorization or the concurrence of Agent Lewicki or another
4 agent?

5 A Yes, everything I recorded, yes.

6 Q You got specific permission each time you recorded
7 someone?

8 A Yes.

9 Q So let's turn to, as I said, 103 and April 5 and it's
10 you and Mr. Catapano, and I believe this is a point where
11 you're both criticizing Joe DiGorga for holding back; correct?

12 A Yes. What was that? What did you just say?

13 Q You are both criticizing -- you're talking about
14 Joe DiGorga holding back, right?

15 A The last conversation we were talking about?

16 Q This conversation, April 5th, 2005.

17 Let's go to line -- let's start with line one.

18 MR. COLON: Strike that, Judge.

19 Q (Cont'd): Let's go to line 7.

20 You say: I know what he does. I know how he
21 operates.

22 And Catapano says -- oh, by the way, who are they
23 talking about when they say I know what he does, I know how he
24 operates?

25 A I don't know right here exactly. I think he's talking

J. Franzese - cross/ Colon

850

1 about Joe D.

2 Q Okay. And you're clearly in line one initiating this
3 conversation, right?

4 A Yes, in line one.

5 Q And so, after the he says: I know how he operates in
6 line 7 Mr. Catapano -- after you say that, rather, Mr.
7 Catapano says: He's like Joe D, and the rest of those guys,
8 Joe D. Carmine and the rest of them?

9 Who is Carmine, by the way?

10 A Carmine is another fellow I met through my father. I
11 knew of his Carmine Q.

12 Q And you say: That F-ing Joe D, boy, what a mother and you
13 stop.

14 And Catapano says: He said he's gonna to see me. I
15 gotta call him tomorrow.

16 John Franzese says: Oh, yeah. What about? The Pent.
17 Ahh I wanna to something with that Penthouse.

18 You recall that, yes?

19 A Yes.

20 Q And you're introducing the topic of Penthouse in that
21 conversation with your cousin, Mr. Catapano, right?

22 A In this conversation, yes.

23 Q Right. And so you want to do something with the Penthouse
24 in furtherance of your, I would, say confidential informant
25 undercover activity, right?

J. Franzese - cross/ Colon

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1 A I don't understand what you mean.

2 Q In other words, you wanted to do something with respect
3 to the Penthouse, you wanted to develop that Penthouse
4 situation in order to facilitate this investigation and carry
5 on with your role as confidential informant, correct?

6 A In here, I think, I was just telling Michael about my
7 intentions about what me and Joe had probably talked about
8 with the Penthouse club. Maybe I didn't tell Michael yet.

9 Q Joe is not recorded in any of this?

10 A Here, no.

11 Q Just you initiating the Penthouse conversation, right?

12 A Here, yes.

13 Q Okay. And then it says:

14 Catapano: I know he told me I gotta see you. It's
15 important. I'll see you Friday. I called him up. I said, Joe,
16 you wanna meet. I'm all jammed up. I said all right. Good
17 'cause I hadda go.

18 You said: Good.

19 Catapano says: Anyway, I hadda meet somebody.

20 He said but I'll get back to you the earlier part of
21 the week. I'm gonna call him tomorrow and say, Joe, what's
22 going on buddy. You want to meet or what. Hoping he tells me
23 he gotta a check for 50.

24 There Mr. Catapano is looking for what? \$50,000
25 from Joe DiGorga, correct?

J. Franzese - cross/ Colon

852

1 A Yes.

2 Q And a check for 50 from Joe DiGorga for what
3 establishment, that is what I want to know?

4 A The Hustler Club.

5 Q Hustler Club.

6 A check for \$50,000 is that what it says there,
7 right?

8 A That's what it said. That is what Michael said, yeah.

9 Q Now, you've been in the Mafia, cosa nostra, organized
10 crime business, all your life essentially, you've been exposed
11 to it; right?

12 A I've been exposed to it, yes.

13 Q And you know that mobsters and people in organized crime,
14 they deal almost exclusively in cash, right?

15 A Not these days and not if you have a consulting
16 agreement.

17 Q You are talking about back in 2005?

18 A Right.

19 Q Okay. But in general you agree with me that it's
20 generally cash, right?

21 A Yes.

22 Q But in this case Joe DiGorga was going to give or at
23 least Catapano expected him to get a check for \$50,000; right?

24 A Yes.

25 Q You testified earlier that some of the crimes you had

J. Franzese - cross/ Colon

853

1 committed were on behalf of or pursuant to your Mafia life,
2 correct?

3 A They went hand in hand.

4 Q How many times did you deal with checks, with respect to
5 your Mafia crimes?

6 A Some of the stocks and the stuff paid with checks and
7 bank account.

8 Q You mean securities?

9 A Yes.

10 Q And shares of stock, yes?

11 A Oh, yeah.

12 Q But security and shares of stock had nothing to do with
13 Hustler, right?

14 A No.

15 Q How much: You ask. Catapano hall?

16 You say: How much.

17 Catapano: For the -- for the place.

18 You recall that?

19 A Yes.

20 Q What place is he talking about? Tell us. Tell the jury
21 what place is he talking about? It's not clear there what
22 place.

23 A I think it's the Hustler Club. It's the same
24 conversation.

25 Q You think but you don't know, right?

J. Franzese - cross/ Colon

854

1 A The first one is about the Hustler Club. The second one
2 I am not sure what place he's talking about for.

3 Q Where does it say anywhere on page two the Hustler Club?

4 A Doesn't say it.

5 Q Where does it state on page three anything about the
6 Hustler Club?

7 A Page three -- wait. I didn't read it (perusing).

8 I don't see any name Hustler here.

9 Q Right. And when he says on top of page three, and when I
10 say he, Mr. Catapano: No, I think he's going to give me your
11 father's fuckin' money, right?

12 A Umm-Humm.

13 Q It doesn't say anything about the Hustler Club there,
14 right?

15 A No.

16 Q And then you say: Oh good?

17 And Catapano says: That's all I want. That's all I
18 want is your father's money back.

19 Right?

20 A That's what he said.

21 Q Meaning your father's money back as though your father
22 had lent, perhaps, Joe money and Joe was going to pay him
23 back, right?

24 A No. This was for the \$30,000 from Angelo's that they got
25 from Angelo.

J. Franzese - cross/ Colon

855

1 Q Angelo from Cujini Due?

2 A Yeah.

3 Q And does, it say anything there about anything Mr. Angelo
4 Cujini Due there page three at all?

5 A No, but I know that's what he was talking about.

6 Q But you didn't say that on the tape, right?

7 A Not on this tape.

8 Q And then further down on line 19 page three you say:

9 Is that what you're are talking about with Joe, the
10 money out of there?

11 What money are you talking about?

12 Catapano says: I'm talking about the money we're
13 doing out of California.

14 And you say: Oh, me and you.

15 That is something totally different than anything
16 that Joe DiGorga is involved, isn't it.

17 A This part is something separate from the earlier.

18 Q There's nothing on this tape here that says any of this
19 money that Mr. Catapano is expecting had anything to do with
20 Hustler?

21 There's nothing on this tape anywhere, is there?

22 A No, there's nothing on the tape that says Hustler.

23 Q Right.

24 A The name Hustler is not used.

25 Q Thank you.

J. Franzese - cross/ Colon

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1 MR. COLON: We'll move on to tape 105 A, if we could,
2 Judge.

3 THE COURT: All right.

4 Q 105 A is a conversation that happened on or about May 4
5 2005; do you recall that?

6 A Yes.

7 Q And would you tell the jury where that took place?

8 A I'm sorry. I can't right now (perusing). I don't
9 remember.

10 Q When it took place, the time, if you recall?

11 A I don't recall.

12 Q You will agree that's yourself, Joe DiGorga and Sonny
13 Franzese, right?

14 A Yes.

15 Q And the theme or the subject matter here has to do with
16 the Hustler Club supposedly being shaken down by the Colombo
17 Crime Family and Joe DiGorga having a role in it, correct.

18 A I'd have to hear the whole thing at once. There might
19 have been certain elements of it. I don't know if it's the
20 whole thing.

21 Q Right?

22 So let's start reading on page two line number one:

23 DiGorga: F-ing guy, what's his name, went to the
24 F-ng grand jury yesterday.

25 You say: Who.

J. Franzese - cross/ Colon

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1 DiGorga: Guys from Hustler.

2 And you say: Well, they gave money, them guys.

3 DiGorga: Who.

4 Well, them guys.

5 You say: Can they testify they gave you money?

6 DiGorga says: Yeah. More than that, I got them two
7 F-ing jerks up in F-ing Connecticut. They went the day before
8 and those are the guys I'm worried -- I'm not worried about.

9 And Sonny says: John, we're ready.

10 And then probably not related to -- we will stop
11 down.

12 Joe DiGorga: Says on page two line 27: I'm in a
13 lotta fuckin' hot water right now. The guy don't seem to think
14 so.

15 You say: Yeah, I don't think so either but -- ahh.

16 Joe says: I think there's gonna F-ing indict me
17 you.

18 Say: You do.

19 For what? What did they say.

20 And Joe says: You got to impress these guys.

21 And you say: Well, what did you do? You didn't do
22 nothing, but settle that favor with them.

23 You recall that?

24 A Yes, I'm trying to ease him down a little bit.

25 Q Because you knew that Joe didn't do anything. He was

J. Franzese - cross/ Colon

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1 just, what, doing somebody a favor? Getting people off other
2 people's backs, so he thought?

3 A Are you asking me why I said that?

4 Q I'm asking -- I am not asking you why you said that.
5 That is what you said, correct?

6 A I answered, yeah, for a reason.

7 Q For Joe is doing somebody a favor, correct?

8 A That's what I told him in that context.

9 Q You believed that as well, it was a favor; right?

10 A No, it was is shakedown.

11 Q Well, when you say "a shakedown" who did he shakedown?

12 A The hustler Club.

13 Q Tell us who the Hustler Club he shook down. Tell the
14 jury.

15 A The same guys that he's worried about that he said that
16 you get money from them and he said, yeah, a little bit
17 earlier.

18 Q Who are those guys?

19 A I don't know them.

20 Q Would the name Michael Grant -- is that familiar?

21 A Sometimes I get confused between the names Grant and the
22 guys specifically from the Hustler Club but I don't forget the
23 names of the club, and what we did with each club.

24 Q How about Anthony Grant?

25 A I don't know.

J. Franzese - cross/ Colon

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1 Q How about William Grant?

2 A I don't know.

3 Q How about Jim St. John?

4 A I don't know.

5 Q How about Harry Moody?

6 A I don't know.

7 Q You don't know any of those individual's names? You know
8 who they are?

9 A I think the guy named Harry Mooney had something to do
10 with the Penthouse Club.

11 Q Any of those individuals I just rattled off, any of them
12 connected to the Hustler Club?

13 A I am not familiar.

14 Q But it's the Hustler Club that was shaken down by
15 Joe DiGorga, that's your testimony; right?

16 A The Hustler Club, right.

17 Q And you can't tell this jury who in the Hustler club was,
18 in fact, shaken down by Joe DiGorga, can you?

19 A The two main guys from the Hustler Club.

20 Q Give the jury some names.

21 A I don't have the specific names.

22 Q Because you don't know, do you?

23 A I don't know the specific names, no.

24 Q Because you had no personal knowledge of the shakedown of
25 this extortion scheme, do you?

J. Franzese - cross/ Colon

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1 A From many conversations with Joe Michael and my dad, I
2 do?

3 Q You have no personal knowledge?

4 A Was I there, no, I was in California.

5 Q You don't even know who the victims were in this case, do
6 you, the names of victims?

7 A The Hustler Club was a victim.

8 Q Names of individuals, human beings, people with 98.7 body
9 temperatures, the human being, who is the victim?

10 A I don't know the name, if that's what you're asking.

11 Q You can't tell the jury can you?

12 A I can't tell jury the name.

13 Q So this May 4th conversation, it keeps ongoing.

14 And DiGorga says: I'm not worried about -- John --
15 I'm not worried, John, we're ready. Go down to -- he's in a
16 lot of F-ing trouble. We are in hot water.

17 We are on page three now.

18 Page three line eight: Yeah, well, settle that
19 favor with them, it's those other guys there, Felix and
20 Anthony are under the, they've been arrested by the feds.

21 You say: Who is Felix and Anthony?

22 DiGorga: For extortion. Those were the guys that we
23 had.

24 Yeah, for the Genovese crew. Yes. You say: Yeah,
25 so they went to these guys. Yes.

J. Franzese - cross/ Colon

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1 And then you say: You met with them, ah, too, they
2 know you?

3 DiGorga says: They know me, yes so. And what
4 happened was that these two guys, the Grant brothers, they
5 went around bullshitting about, ahh, being in trouble with
6 these guys. And he's referring to Felix and Anthony, correct.

7 A Yes.

8 Q And we're gonna kill them and all of that. And they, of
9 course, told them that I stepped into the fuckin' picture and
10 ya, you know, they didn't mention his name, thank fuckin' God
11 'cause I didn't. I kept it from them.

12 And you say: Right.

13 DiGorga says: You know? And then these guys backed
14 off 'cause they went to see, see people here -- told 'em back
15 off, you know.

16 Right.

17 And on the next page, page four DiGorga again:

18 These guys, because they went to the West Side.

19 You say: So yas did 'em a big favor.

20 Did them a big favor DiGorga yeah but.

21 Franzese: Guys.

22 DiGorga on line six: But the F-ing guys now the feds
23 are in -- involved, call them in called in, Jim called in,
24 called Harry Mooney in. They got Willy for.

25 You say: How'd they find out? These guys musta

J. Franzese - cross/ Colon

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1 ratted.

2 DiGorga says: Grant I think they fuckin' gave
3 them me up and then we have another problem in New York.

4 And then he goes down to talk about Carlo and the
5 Penthouse.

6 THE COURT: Mr. Colon, you got to read slowly.

7 MR. COLON: I will slow down.

8 Q That's the extent of what you know is on this tape?

9 A On this particular tape.

10 Q And there may be some other exchanges on other tapes with
11 respect to this tape. This still doesn't tell you who the
12 victims at the Hustler Club are, right?

13 A This tape tells us we were shaking them down. I think
14 that's what it tells us.

15 Q We were shaking them down" meaning who, you?

16 A No.

17 Q The Genovese guys Felix and Anthony?

18 A They were trying to.

19 Q Until someone intervened, right?

20 A Yes.

21 Q According to you, it would be Joe that intervened, right?

22 A Joe brought the problem into, I think, my cousin Michael,
23 who then went and sat with those two guys from the Genovese
24 club, supplemented the favor, and then after the deal was made
25 that we get money from the Hustler Club and Joe becomes a

J. Franzese - cross/ Colon

863

1 consultant.

2 Q So the extortion scheme or the attempt to extort the
3 Hustler Club was really on the part of Felix and Anthony,
4 you'll agree first? Yes?

5 A It was another shakedown, yeah.

6 Q By someone totally unrelated to Sonny or your dad or Joe
7 DiGorga, right?

8 A Yes.

9 Q And you don't know about the feds coming in before Joe
10 was involved, do you?

11 A The feds? I knew of my involvement. That was about it.

12 Q Not your feds. Some feds up in Connecticut.

13 A I knew there was trouble up in Connecticut.

14 Q But did you know the feds were involved?

15 A I had known that there were problems up there, too.

16 Q The question is did you know the feds were involved?

17 A Yes. Generally, any kind of law enforcement with us was
18 always the FBI.

19 Q So when you say there was trouble there wasn't only
20 trouble with respect to the Genovese, there was trouble with
21 respect to the FBI, yes?

22 A FBI in regards to what was going on with this place in
23 Connecticut and the guy Felix and Anthony, the two captains up
24 there, got a lot of heat.

25 Q Felix and Anthony, they're the ones that were extorting

J. Franzese - cross/ Colon

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1 the Hustler Club, correct? Yes?

2 A They didn't extort them yet. Because of us they
3 couldn't.

4 Q So you guys actually stopped the extortion from going
5 forward, correct, by Felix and Anthony, yes?

6 A They solidified our position to extort the Hustler Club.
7 Felix and Anthony did.

8 Q But you didn't extort Hustler, did you?

9 A Me personally, no.

10 Q And neither did Joe DiGorga, for that matter?

11 A Joe DiGorga was part of it.

12 Q He was?

13 A Yes.

14 Q But because he did them a favor and got these two guys
15 Felix Anthony from Massachusetts off their back?

16 A Unfortunately it's commonly referred to things that we do
17 if terms like favors and stuff, for obvious reasons.

18 Q And you're sure that Joe DiGorga was involved, right?

19 A I'm positive he was involved.

20 Q And you recall when he got involved in?

21 A Not exact date or time?

22 Q You don't remember the month at all?

23 A I think it began back in the 1970s when he started doing
24 business with Deja Vue and all of them.

25 Q In the 70s?

J. Franzese - cross/ Colon

865

1 A 1990s when he started -- when he first met them from his
2 first club.

3 Q But you were drunk most of the time, right?

4 A Yeah, but that's where he met them from that club, I
5 believe.

6 Q I see.

7 So you had personal knowledge of that?

8 A Yeah, Joe told me.

9 Q Joe told you?

10 A Sure.

11 Q Okay. Did you have that recorded anywhere?

12 A Probably not that and other things, too, I guess.

13 Q Did you have any other recording we don't know about?

14 A Not that I know of.

15 THE COURT: Mr. Colon, how are you doing on time?
16 Shall we take a lunch break?

17 MR. COLON: I have about another hour, at least.

18 THE COURT: Another 15 minutes and then we'll break
19 for lunch.

20 MR. COLON: Sure. Let's go to 106 B, if we could,
21 May 9, 2005.

22 THE WITNESS; I'm sorry. What was that, again?

23 Q I'm sorry, Mr. Franzese, 106 B. May 9, 2005.

24 A I got it.

25 Q Take a look at that first page. Confirm for me who the

J. Franzese - cross/ Colon

866

1 participants were, if you could?

2 Do you know who the participants were on May 9,
3 2005?

4 A Yes.

5 Q Who are they? Tell the jury, please.

6 A John Franzese, Michael Catapano and Carlo Tieri.

7 Q Carlo Tieri. We have had his name in some of these
8 transcripts before, right?

9 A Yes.

10 Q With respect to Penthouse?

11 A Yes.

12 Q Carlo Tieri is somebody doing time somewhere in either
13 federal, state prison, right?

14 A Well, I don't know. No one -- the government was never
15 allowed to tell me about anything about the case but I always
16 wondered.

17 Q You know about that now, don't you?

18 A You just said it, so it must be so.

19 Q And Carlo Tieri, this is another example of, I think of
20 you and Mr. Catapano and people like Carlo Tieri, not trusting
21 Joe DiGorga because you know that you can squeeze and pressure
22 and intimidate a guy like Joe DiGorga to doing whatever he
23 needs to do to survive?

24 And Mr. Carlo Tieri, he starts with: Like, like
25 remember you used to tell me I don't like that guy. I gotta a

J. Franzese - cross/ Colon

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1 funny feeling.

2 Do you recall that?

3 A Yes.

4 Q And you actually start to talk about Joe D, aren't you?

5 A I'm talking about when me and Carlo used to get high
6 together.

7 Q Well, did you and Carlo get high on May 9, 2005?

8 A No, but that's what he's referring to that I used to tell
9 him.

10 Q Okay. So this is -- you were -- you were buddies from the
11 old days in terms of getting high, right, cocaine? Yes?

12 A I partied with Carlo, yes.

13 Q When you say "partied" you mean, what, cocaine, crack?

14 A We used cocaine?

15 Q Crack, too?

16 A Carlo didn't use crack.

17 Q Did you sniff heroin, by the way?

18 A Me?

19 Q Yeah.

20 A Never -- twice by accident.

21 Q Twice by accident?

22 A Yeah.

23 Q Let's go back to Carlo over here.

24 Then you say: Yeah.

25 And then Carlo says: Just after meeting him for,

J. Franzese - cross/ Colon

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1 like, three minutes. That's, well, I don't know what you do
2 with Joe.

3 By the way, he's referring to, who, Joe D?

4 A Umm-humm.

5 Q I'm sorry?

6 A I believe so, yes.

7 Q He made all of that up in the paperwork and you know and
8 the thing with the closing. Eeh. So yu burn it all?

9 What did he mean by that?

10 A The club in Lindenhurst where he was getting money to
11 open. He ended up never opening it and keeping the money and
12 closing it before it opened.

13 Q And did you give him money for that?

14 A Personally.

15 Q Yeah?

16 A No.

17 Q Did you know if anybody gave him money for that?

18 A He kept telling me he was getting this money and that
19 money and this money every time I went there and he fixing it
20 a little bit.

21 Q He didn't get any from Catapano, do you know?

22 A I don't think for the club, but I think over -- before
23 then he had gotten from Michael Catapano.

24 Q Borrowing money from Catapano?

25 A I think he was -- he asked for money that they collected

J. Franzese - cross/ Colon

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1 on that Angelo thing.

2 Q Angelo, meaning Cujini Due?

3 A Yeah.

4 Q But you agree that he also may have borrowed money from
5 Michael Catapano as well?

6 A I don't know personally if he borrowed money from
7 Michael. I know that he took 14,000 I think from Michael for
8 -- because he had no money left because of the loan from Joe
9 Toursto. Something he kept saying to me.

10 Q So that 14,000, was that a loan to Joe D?

11 A I think eventually he had to pay it back, yeah.

12 Q And generally, you have to pay back loans, right?

13 A Yes.

14 Q So Catapano then chimes in with: Yeah on line nine?

15 And then Carlo says: You, uh worry about that guy
16 really.

17 Catapano: I'll tell you the truth, me, my personal
18 opinion is if he gets nailed he ain't standing up. He's not
19 standing up.

20 What do you understand him, Mr. Catapano, to mean by
21 he "ain't standing up" tell the jury?

22 A Meaning that he had become an informant.

23 Q So you guys thought that Joe D would become an informant?

24 A That seems to be what they were talking about.

25 Q Because you didn't trust him, did you?

J. Franzese - cross/ Colon

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1 A There were questions about him.

2 Q Joe D is seated here at defense table?

3 A Yes.

4 Q He is not an informant like you are an informant,
5 correct?

6 A No, he's not.

7 THE COURT: Overruled.

8 Q He certainly not testifying against your father, is he?

9 MS. NASH: Objection.

10 THE COURT: I'll overrule that.

11 A Not that I know of.

12 Q Then John Franzese: No, they won't give 'im hair care in
13 there.

14 Catapano: No. You can't go.

15 Carlo: They won't give 'im hair care.

16 You say: No, they take it right off you.

17 You say: Sure, but you can put all kinds of
18 contraband in that F-ing thing.

19 You're ridiculing Mr. DiGorga, aren't you?

20 A I am referring to Carlo and Carmine -- Carlo and my
21 cousin Michael who pushed -- we're talking about Joe D.

22 Q Making fun of him, right?

23 A Well, yeah.

24 Q Ridiculing him, right?

25 A Making fun of what would it be like to go to prison

J. Franzese - cross/ Colon

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1 wearing - a -- unfortunately, yes.

2 Q So you are all ridiculing him, actually, aren't you?

3 A We are joking around.

4 Q Because's really he's not one your crew, is he? Yes or
5 no.

6 A Yes, he was a part of our crew.

7 Q He is a "made" guy?

8 A No, he was not a made guy.

9 Q I see.

10 And Carlo on line 26 page two: It's Carlo actually
11 initiates the Penthouse discussion, correct, line 26?

12 A I believe he brings up the topic first, yes.

13 Q Ahh, no. Then there was something. What'd he say he was
14 going to Penthouse, I talked to the owner of the Penthouse,
15 I'm trying to get him to lean, if it falls our way telling
16 'im, ya know, we can bring people in, ya know, we can also
17 help people business wise, ya know, entertainment people, but
18 he's, ya know.

19 That's actually Carlo that's trying to lean on the
20 guy in Penthouse right?

21 A He was another fellow that was trying to do what we
22 wanted to do there.

23 Q Carlo was?

24 A Yes.

25 Q He was trying to shake down Penthouse, right?

J. Franzese - cross/ Colon

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1 A We were all trying to shake him down.

2 Q Right. And Catapano says:

3 He don't want nobody to fuck this shit up.

4 Who is he referring to?

5 A I believe Joe D.

6 Q You believe but you don't know?

7 A It is Joe D.

8 Q He doesn't say it there, does he?

9 A No, but that's who he is referring to because of the
10 Penthouse.

11 Q And in fact, at Penthouse you had a brother by the name
12 of Carmine, right?

13 A Yeah.

14 Q That tried to get into Penthouse in order to just
15 undertake a legitimate or provide a legitimate service in
16 terms of servicing the ice machine for the refrigerator,
17 right?

18 A I don't remember anything involving my brother Carmine in
19 this regard at all.

20 Q Carmine was able to get a job at Hustler filling their
21 ice machines and running the refrigeration, correct?

22 A I don't remember.

23 Q What does your brother Carmine do for a living?

24 A He is in air conditioning.

25 Q Which would involve refrigeration as well, right?

J. Franzese - cross/ Colon

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1 A Yes.

2 Q And you wanted your brother as part of all of this that
3 was going on to get that job in Penthouse, did you not?

4 A Yes, I would have wanted him to. I am not sure I
5 remembered at that time to do that.

6 (Continued on next page)

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J. Franzese - cross/Colon

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1 THE COURT: Continue, please.

2 BY MR. COLON:

3 Q Right. And you were upset with Joe DiGorga because Joe
4 didn't want to put your brother in there because he wanted
5 nothing to do with Penthouse, right?

6 A I don't remember that at all, actually.

7 Q Well, you don't want nobody to have this shit up, on that
8 top line, line 1, and you say no, but he knows, we'll get a
9 line on it, I told him. We already got a line on it. Mr.
10 Catapano, who happens to be a captain or just a made guy?

11 A He was a captain, an acting captain at the time.

12 Q Right. So he's a big shot in the organization; correct?

13 A He is what he is.

14 Q Right. He says, he tells this to Joe, I presume, line 4,
15 I said, let me tell you something, Joe, I don't give a fuck.
16 John went to the bathroom -- meaning you, correct?

17 A Yes.

18 Q And I got a loan 'cause I didn't want John, no, I said
19 Joe, I don't give a fuck where you get that money. I'm the
20 first guy, I don't give a fuck who's in line, me first. I
21 don't want to hear no fuckin' shit from you. I'm the guy
22 whose getting it first. He's like, no, no, I know, I know.

23 You remember that dialogue between you and Catapano,
24 Catapano deciding what Joe told him, no, no, I know.

25 You were there?

J. Franzese - cross/Colon

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1 A I remember this conversation.

2 Q Sure you do. Because Michael Catapano was threatening
3 Joe DiGorga, wasn't he?

4 A He was being very aggressive with collecting the money,
5 yeah.

6 Q There is not much of a difference between being
7 very aggressive --

8 A I agree with you.

9 THE COURT: At a good point, Mr. Colon.

10 MR. COLON: Judge, I have more to go, but we'll
11 break.

12 THE COURT: If you have more on this line you can
13 continue for about 5, 10 minutes. If not, if this is a good
14 breaking point --

15 MR. COLON: We should break.

16 THE COURT: Ladies and gentlemen, we will take lunch
17 until 10 to 2. Again, keep an open mind. Do not discuss the
18 case amongst yourselves nor with anyone else and have a nice
19 lunch. See you at 10 to 2.

20 (Jury leaves.)

21 THE COURT: Be seated, please.

22 You can take the witness out.

23 (Witness leaves.)

24 THE COURT: Mr. Colon, I have one point I wanted to
25 make to you. I notice as you're reading the transcript here,

J. Franzese - cross/Colon

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1 you're not really differentiating between when you're quoting
2 and when you're asking a question, and I'm just concerned
3 about the quality of the transcript you're going to get out of
4 this. Just bear that in mind.

5 MR. COLON: I apologize, your Honor. I'll make a
6 very clear break and not interject any comments.

7 THE COURT: The reporters are doing their best and
8 often they are getting it, but often, because you start
9 reading and then you go right in a question of the witness,
10 it's not coming out that part is transcript and part is
11 question.

12 MR. COLON: I acknowledge that. I will do my very
13 best to avoid that.

14 MR. PAUL: Can we approach for a minute?

15 THE COURT: You need to approach?

16 MR. PAUL: I will do it in open court.

17 Your Honor has suggested with regard to the jury
18 staying awake. I wanted to tell the court -- I didn't want to
19 interrupt Mr. Colon's cross, but during the course of much of
20 the testimony, Juror No. 12 I would ask your Honor please to
21 just keep an eye on because Juror No. 12 has been nodding out.

22 THE COURT: All right.

23 I have been watching and I did not observe that. I
24 will give them the after-lunch-be-especially-careful speech
25 that I have when they get back.

J. Franzese - cross/Colon

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1 I will tell you, I mean, I don't want to tell the
2 defendants how to do their case, but it seems like it's going
3 on a very long time to me. That is not a ruling, it's just a
4 suggestion that you might want to pick it up a little. If you
5 do, you will have jurors who have an easier time being
6 focused.

7 But, certainly, whether you pick it up or not, they
8 have to stay focused, so I will instruct them accordingly.
9 All right. Have a good lunch.

10 (Luncheon recess.)
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J. Franzese - cross/Colon

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A F T E R N O O N S E S S I O N

(Open court.)

THE COURT: Let's have the witness on the stand,
please.

MS. POSA: We were able to locate a copy of the
agreement that Mr. Franzese signed with the US Marshals.

THE COURT: You've turned it over?

MS. POSA: Would your Honor like a copy?

THE COURT: I can't hear you, Miss Posa.

MS. POSA: Would you like a copy, your Honor?

THE COURT: Please.

(Witness resumes the stand.)

(Jury present.)

THE COURT: Be seated, please.

Ladies and gentlemen, before we continue, I did want
to remind you, as I mentioned to you when we first started
this trial, that, particularly following lunch, it becomes
more difficult for you to focus as intensively as we need you
to focus on the case.

I mention this particularly now because I did notice
before lunch that one or two of you weren't quite as focused
as you had been earlier in the case.

I don't want to have to single anybody out. I did
want to remind you that if you're looking down for a long
period of time, I have to wonder whether you are still with us

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1 entirely and I'll have to single you out and ask you if you
2 are. Please don't make me do that.

3 It's very important to all the parties here, this is
4 a very important case, that you focus at all times. I'm not
5 saying it's easy, but I am saying it is really important. So
6 we appreciate your attention.

7 Mr. Colon, you may continue.

8 MR. COLON: Thank you so much, your Honor.

9 BY MR. COLON:

10 Q Mr. Franzese, I'm going to draw your attention to 111 D,
11 a conversation that occurred on July 10, 2005.

12 That is 111 D as in David. I just want you to look
13 at that first page with the exhibit tab on it. Before you go
14 into that fully, I'm just going to ask you a couple of
15 questions.

16 Keep your voice up, please, and speak loud, okay?

17 A Yes.

18 Q Thank you.

19 During the course of this investigation and your
20 role playing on behalf of the government, you essentially
21 became an actor; correct?

22 A No.

23 Q You weren't acting the part of a mobster or a wannabe
24 mobster, someone trying to get back into the fold, your crime
25 family's fold?

J. Franzese - cross/Colon

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1 A I just show up, kind of be myself and keep a recorder on.

2 Q You obviously weren't planning any of the crimes that
3 were being discussed here; correct?

4 A Yes, correct.

5 Q You weren't participating, you were just doing this as a
6 ruse in order to get your family and friends in trouble;
7 correct?

8 A I was recording conversations for the government.

9 Q Right. So the things you said often were not true, you
10 were just saying them because it was going to promote or
11 advance the mission you were on; correct?

12 A As far as me committing any violent crimes or anything,
13 that would not have be true.

14 Q I'm not saying -- you didn't have any intention to commit
15 any crimes you were discussing here with these other
16 individuals, right?

17 A No.

18 Q So I'm saying, you were playing the part of someone who
19 wanted to return to that organized crime life; correct?

20 A Yes, somebody that came back to New York, yes.

21 Q You were acting, that's what I mean by acting.

22 A I would think that an actor reads from a script and
23 something, but I just showed up and kind of let them talk.

24 Q So there were -- in fact, some of things you said --
25 well, many of the things you said were not true in terms of

J. Franzese - cross/Colon

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1 what your intentions were; correct?

2 A Yes, for me.

3 Q And drawing your attention to July 10, 2005, 111 D, I'm
4 just going to take you to page 4, if I may.

5 A Page 4?

6 Q Yes, page 4, line 9, where you're captured on tape saying
7 the following: You're supposed to tell them, you're supposed
8 to give him money anyway.

9 Catapano: Here ya go, here's your money. Franzese:
10 You say something like, the kid told you he was doing real
11 good. So you say, well, you got something for over here, and
12 that's all you stick to. Laughs. Okay? That's all, you
13 just, so you ask him and you say, I made a score with this
14 kid, fuckin' kid, ever says anything, say you lying
15 cocksucker.

16 You remember saying that?

17 A Yes, I remember why, who I was saying it about.

18 Q Okay. Who were you saying it about, by the way?

19 A I believe at this time it was Nicky Bova.

20 Q And then it goes on to say, Catapano: No, I told him, I
21 said listen, I don't know what you're doing. Franzese: Yeah.
22 Catapano: He says, unintelligible. Franzese: But right
23 away, you lying motherfucker, that lying moth, let me get this
24 kid right in his face, you lying cocksucker.

25 You said that, right?

J. Franzese - cross/Colon

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1 A I said, yes.

2 Q Then well jump to page 5 line 1. Franzese: Yeah, right.
3 Because even if I do, right to your fuckin' face, I'm gonna
4 tell you ya, you're a fuckin' lying cocksucker.

5 You said that, correct?

6 A I did upon advice to do that, yes.

7 Q You had lied so many times in the past you were pretty
8 good at lying, correct?

9 A I knew that was a trick to do what you tell someone when
10 you want to make believe you don't want to talk about drug
11 deals.

12 Q Where did you learn that trick?

13 A Just over the years in listening to other guys.

14 Q And practicing that trick yourself; correct?

15 A Maybe.

16 Q Okay. And you say -- well, Catapano says: I'll deny it
17 right to your face. Then you respond: Right, of course, I'll
18 deny it right to your fuckin' face.

19 You said that, right?

20 A Yes.

21 Q So how does the jury know that you're telling the truth
22 these last two or three, given what you told us in your
23 testimony and what we just read?

24 A Because it is the truth. It's on the tapes.

25 Q Even though you're well versed at lying, right?

J. Franzese - cross/Colon

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1 A I --

2 Q Yes or no will do.

3 A No, I'm not well versed at lying.

4 Q It's not because of the lack of lying, is it?

5 MS. NASH: Objection.

6 THE COURT: Sustained as to form.

7 Q You've lied a thousand times in your life, haven't you?

8 A I've lied often, yes.

9 Q Would you care to put a number on it?

10 A That would be a lie if I tried to put a number on it.

11 Q Even that would be a lie, wouldn't it?

12 A Well, if I said 5 or five thousand, I don't know.

13 Q Let's go to 111 C.

14 I ask you to tell the jury what 111 C is about, the
15 conversation between yourself, Mr. Catapano, and Frank
16 Campione, correct?

17 The question was do you recall who participated in
18 that phone call -- in that taped conversation?

19 A Oh, it was John Franzese, me, Michael Catapano and Frank
20 Campione.

21 Q July 10, right?

22 A Yes.

23 Q Okay. Mr. Catapano says, line 1, page two: You know who
24 hates me, Frankie, when he sees me, he sees the devil, Cugini?

25 A Yes.

J. Franzese - cross/Colon

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1 Q He's referring to Frank Campione, right, when he says,
2 Frankie?

3 A No, he's talking to Frankie.

4 Q You know who hates me Frankie, when he sees me he sees
5 the devil, Cugini; that's where Catapano is talking to Frank
6 Campione, correct?

7 A Right.

8 Q Further down, Catapano says on line 16: Oh, my God, he
9 sees the fuckin' devil when he sees me, and he laughs, right?

10 A Yes.

11 Q You say, oh, he's a, yeah, unintelligible, abused him.
12 Catapano says: I had abused him one day in the fuckin'
13 parking lot.

14 You weren't there in that parking lot, right, Mr.
15 Franzese?

16 A No.

17 Q Okay. But you believed that he was referring to abusing
18 who?

19 A Tony from the first Cugini's.

20 Q Tony Franzella?

21 A I don't remember his last name. I seen him a hundred
22 times though.

23 Q But you know who he is?

24 A Yes, I know who he is.

25 Q And Franzese says: Yeah, and Campione says, fuck em,

J. Franzese - cross/Colon

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1 right? Yes?

2 A Yes.

3 Q All right. Next page, page 3, line 1. Catapano says, I
4 fuckin', he tells me, I don't have to do anything, my guy told
5 me that -- my guy told me that we have to wait for -- I said,
6 let me tell you something, you that ain't on the fuckin' table
7 no more, we ain't waiting, I said, and who's the guy who told
8 you? But I knew who it was, it was Joe Voto, but Joe Voto
9 didn't say it, I says Joe Voto.

10 Remember that?

11 A Yes.

12 Q In fact, it's Mr. Catapano who is driving this whole
13 extortion scheme with Cugini Due, isn't it?

14 A He was retelling the story to us, to me and Frankie.

15 Q Right, when he meet Mr. Franzella in the parking lot and
16 abuses him, right?

17 A Yes, that was one of the events.

18 Q He doesn't mention Joe DiGorga there at all, does he?

19 A Not in the parking lot.

20 Q Right. And on page 4, line 1, Mr. Franzese, you say:
21 No, he won't show up cause he's scared of you anyway. Joe.
22 Catapano: To show up. Campione: How could he get involved?

23 Then we go down to line 22, it picks up where
24 Mr. Catapano says: One time I went to his brother, you know
25 his brother's got that hair cutting joint over there,

J. Franzese - cross/Colon

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1 Angelo's.

2 Do you recall that?

3 A I recall the stories.

4 Q Right. And on line -- page 5, Catapano says on line 7:

5 I went in there. Line 9, you say: On purpose or by accident?

6 And Catapano responds on line 10: No, I went on purpose.

7 Campione laughs.

8 Franzese, you, say oh. Then Catapano says, Fuckin',
9 he had Angelo's mother in the chair. He was doing her hair.
10 When he seen me walk in, he got so nervous I felt so sorry for
11 Angelo's mother 'cause I seen her head going down like this,
12 could see this curling the hair and pulling it out.

13 You recall Catapano saying that, right?

14 A Yes.

15 Q And he makes no mention whatsoever of Mr. DiGorga?

16 A Not at this time.

17 Q Mr. Catapano goes in on his own by himself, right?

18 A I'm not sure if he was saying that he went in there by
19 himself.

20 Q You wouldn't know because you weren't there, right?

21 A From this conversation, I believed Joe was with him
22 because of other conversations.

23 MR. COLON: Move to strike.

24 Q You weren't there?

25 A I was not there.

J. Franzese - cross/Colon

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1 Q So you don't know personally?

2 A Other than Michael telling me.

3 Q Michael said -- you don't know personally, you weren't
4 there like you said, right?

5 A I was not physically present.

6 Q Right.

7 And Catapano says, on line 5 -- rather, line 21,
8 page 5: Yeah, they're related. And once I showed up in there
9 then they fuckin' signed the papers. It was all over.

10 You recall Mr. Catapano taking the credit for that,
11 right?

12 A Yes.

13 Q And he didn't mention Mr. DiGorga there, did he?

14 A Not in this conversation.

15 Q No.

16 And later on, page 6, Mr. Catapano line 21: Listen,
17 I'll talk to him, talk to him, all right? Please, please try
18 not to, listen, I said, I won't come back unless you can do
19 what I gotta ask you to do, otherwise I gotta come back.

20 That's Mr. Catapano; no mention of Mr. DiGorga,
21 right?

22 A Correct.

23 Q Then on 116 A, you and Mr. DiGorga and Mr. Franzese are
24 having a discussion. I believe the discussion has to do with
25 a club in Lindenhurst, right?

J. Franzese - cross/Colon

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1 Take a look at that, familiarize yourself with the
2 time. If you know the date, please let the jury know, let me
3 know if you know the date -- the time, rather.

4 A No, I don't.

5 Q I believe the discussion had to do with the club and
6 getting a C of O, a certificate of occupancy by Mr. DiGorga,
7 right?

8 A Yes.

9 Q And in that, Mr. DiGorga is advising you or telling you
10 that someone is pushing it in the town of Babylon, somebody by
11 the name of Steve Bellone, yes? Line 12?

12 A Somebody got close to Steve Bellone.

13 MS. POSA: Your Honor, objection. We object to the
14 comments "right, right, yes, no," after the question.

15 THE COURT: Let's just ask questions.

16 BY MR. COLON:

17 Q You understand the scenario there, right, Mr. Bellone
18 getting a C of O in about six months or so for Mr. DiGorga?

19 A I did not know the time frame. I thought it was a lot
20 quicker.

21 Q It's actually six months, according to Mr. DiGorga on
22 page two line 20, right, when he says, I was with him. I was
23 with him. I was with -- unintelligible -- they're the ones
24 who pushed the whole thing, took six months to get a fuckin'
25 CO.

J. Franzese - cross/Colon

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1 A Okay.

2 Q That's correct, you heard that from Mr. DiGorga's mouth,
3 right, correct?

4 A Yes, that's what he said here.

5 Q All right. And then you asked -- page 3 line 9: Asking
6 you for anything? Line 10, Mr. DiGorga says: He's expecting,
7 and he laughs. You say: You're expecting right? Line 11.
8 Mr. DiGorga says: He's expecting.

9 That's all, correct?

10 A Yes.

11 Q No mention of money in that conversation with respect to
12 what Mr. Bellone received?

13 A The word money, no. But it was about money.

14 Q He's expecting?

15 A Yes.

16 Q Nobody knows what he's expecting, right?

17 A I know what I was talking about.

18 Q I see.

19 MR. COLON: I will go to 115 a for a second -- maybe
20 a little longer a second, Judge, I apologize for describing it
21 that way.

22 Q 115, page two, Carlo is a -- Carlo is really the problem
23 with Penthouse, do you agree with me?

24 A Carlo is one of the problems.

25 Q Yeah, and you're having this conversation with your dad,

J. Franzese - cross/Colon

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1 Sonny?

2 A Yes.

3 Q And your dad tells you on line 5, page two,
4 unintelligible, but he starts out with: I don't know why you
5 put yourself in these things, John. And you say, line 7:
6 Because he's -- and it goes to line 8, what you wanna go to
7 Penthouse, for what?

8 So Sonny is asking you why you want to get involved
9 in Penthouse, isn't that a fact?

10 A Yes, that was the question he asked.

11 Q You had an interest in pushing this agenda that the
12 government was giving you with respect to your family and
13 friends in terms of gathering evidence against them, right?

14 A Can you repeat that again.

15 Q With respect to why you were interested in going to
16 Penthouse, because you were interested in facilitating or
17 pushing the agenda that the government had designed for you?

18 A The only reason why I went to any of these places was
19 because I was doing this stuff. I was around it.

20 Q Your service to your fellow man, correct?

21 MS. NASH: Objection.

22 THE COURT: Sustained.

23 Q And let's go down to page two line 21. You say: I'll do
24 it with him, we'll supersede him. He ain't doing nothing,
25 Carlo. Sonny: What? You again: He ain't doing nothing

J. Franzese - cross/Colon

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1 there. Sonny says: No, he ain't doing nothing there. You
2 say: Can't do nothing. And Sonny says: Nothing there.
3 Neither does Joe D.

4 Right, do you recall that?

5 A That was the words used describing that conversation.

6 Q Right. Thank you.

7 Going back to Joe Toursto for a second with respect
8 to page 3, if you look on line one, it's you that introduces
9 the idea into this conversation of going with Joe D to see Joe
10 Toursto, correct?

11 A Yes.

12 Q Line 1: Why don't I go with Joe D? Sonny: Huh. You:
13 To see Joe Toursto, to take Joe D to see Joe.

14 That was you instigating or moving that Joe Toursto
15 situation, isn't it a fact?

16 A Yes, I brought up the topic.

17 Q 116 C. This has to do with Joe Toursto, yourself and Joe
18 DiGorga again?

19 A Yes.

20 Q You don't recall where that took place, do you?

21 A No, I know some were made in Babylon, some were made in
22 other restaurants, I'm not sure day or night, some were at the
23 Hustler Club I think. I'm not even sure.

24 Q At this time you didn't trust Joe D, but you wanted to
25 make sure that he was paying his fair share of whatever he was

J. Franzese - cross/Colon

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1 collecting, so you were pushing him along, weren't you?

2 A I was just going in to talk to Joe about what was going
3 on.

4 Q So you asked, on page two, line 1, on July -- rather, on
5 August 4, in 116 C, How do you want to approach Terrence.

6 DiGorga: We're gonna go and I'm talk. You say: You wanna
7 make me the bad guy, you want to be -- DiGorga: No, no bad
8 guys, you're not gonna go in. You're gonna, I'm gonna go in
9 there and I'm gonna tell them some people came to us okay, and
10 they're going to make a move on the fuckin' joint and they
11 reached out to me because they know you used to work with me.

12 You say, right. DiGorga: So I'm here to tell ya,
13 if you don't come along and do what you gotta do, you're gonna
14 have fuckin' problems over here. You say, I can see that.

15 With me so far?

16 A Yes, I'm with you.

17 Q DiGorga says: I sent two guys in there and --

18 By the way, what two guys did he send, if you know?

19 A I thought at the time --

20 Q Do you know?

21 A Right now, no.

22 Q DiGorga says: Scared the fuck out of them, line 17.

23 Line 19: Yeah, we scared the fuck outta them.

24 A No.

25 Q May I finish? Line 20: You sent Michael and his son,

J. Franzese - cross/Colon

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1 right? DiGorga says: Yeah. No, not Joey Joey and Mike, I
2 sent two other guys in there. They loath Joey.

3 Now, who was he referring to?

4 A The second time he sent people in there, not the first.

5 Q But you thought he had sent somebody else in, right?

6 A He did. You see it says you told me, and that's why I
7 thought he was referring to when he sent Michael and Joey in
8 there first.

9 Q Line 21 he says -- sends two other guys, correct?

10 A Yeah, so must have done it twice.

11 Q He must have -- do you know who he sent in for sure?

12 A I don't remember. No.

13 Q So he doesn't say who he sent in, does he?

14 A Nope.

15 Q And you don't know who he actually sent in, do you?

16 A I didn't know at this time.

17 Q And you don't know if he sent anyone in, do you?

18 A I'm kinda sure he did, because I got the name Terrence.
19 I didn't know who Terrence was.

20 Q Well, if you don't know -- strike that. You don't know
21 who if anybody he sent in, do you?

22 A I don't know who he sent in, the other two guys.

23 Q Right.

24 Then go down to line 27. He says -- Joe DiGorga
25 says: Yeah, but they didn't go in there to shake him up, they

J. Franzese - cross/Colon

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1 just went in cause they know Joey, he fuckin' -- line 30,
2 right, okay. Over to page 3, They know who he is, and -- line
3 2. It was you, Carlo, you sent Carlo. DiGorga, line 3: Huh?

4 You, line 4: You sent Carlo there, didn't you?

5 DiGorga: No, I never sent Carlo. Oh, you say on line 6, and
6 DiGorga in line 7 says: He went with Joey one night to have a
7 good time, the next fuckin' thing you know it's like he owns
8 the fuckin' joint.

9 Line 14. DiGorga: It's like he owned it. Line 13.
10 DiGorga: And then -- line 14, yourself: What kind a move he
11 makes? DiGorga: Then he tells them, this is what he tells
12 them, if anything happens to you come to me and I'll
13 straighten it out. The guy says: Come to you? Fuck you.

14 Who is he saying that to, who's he saying come to
15 you, fuck you?

16 A He's telling me a story of what someone told him somebody
17 said to Carlo.

18 Q He's telling you a story about somebody -- what somebody
19 said to Carlo?

20 A Yes..

21 Q Somebody at Penthouse, right?

22 A Yes.

23 Q That they basically told him to take a hike, right?

24 A Told Carlo to take a hike with Joe.

25 Q Because in fact nobody was shaking down Penthouse, isn't

J. Franzese - cross/Colon

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1 it a fact?

2 A We were trying to at that time.

3 Q You were trying to, right?

4 A No. We were -- that was part of where I went.

5 MR. COLON: Judge, this is 117. It goes on for
6 awhile, and I have to get to 117.

7 Q Now, we discussed earlier the topics of Toursto and
8 Giangrande, so we're going to go through some of this -- going
9 to go through some of the dialogue here on Toursto, okay.

10 117, page two. Franzese, line 1: Well, let me ask
11 you the thing, look, I don't want to push it for this, but I
12 told them guys I got with you so you wouldn't have to go
13 alone.

14 DiGorga, line 4. Who's that? You say: My father
15 and Michael. DiGorga says: Ahum. And Toursto and them, line
16 7. Then DiGorga says: Yeah, listen, you want to know
17 something. DiGorga, line 10: Listen it got to the point like
18 this, you know, what I told your dad? I says, you want the 16
19 thousand, it's actually 20,000, but you want the 16 thousand,
20 I give him in cash that day you were there, get it and do me a
21 favor, keep it. You can have it. I'm on the balls of --

22 You recall that dialogue, right?

23 A Yes.

24 Q In other words, Joe D didn't want to have any part of
25 Mr. Toursto after he got burned by him; correct.

J. Franzese - cross/Colon

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1 A In this conversation he was saying that.

2 Q Right.

3 Down on line 22, DiGorga says -- line 20, you ask:
4 Let me ask you this, how much does he owe you? DiGorga says,
5 he owes me. DiGorga, line 24: With the vig? You say, line
6 25: Well, sure, you're gonna let him get away?

7 DiGorga says: Your old man said forget it. You
8 say, line 27: I'm not gonna. DiGorga says: He told me to
9 forget it.

10 That's what Joe DiGorga said, right?

11 A Yes, he said the words, He told me to forget it.

12 Q He wanted no part of Mr. Toursto even after three years,
13 any money that supposedly went down or occurred or any
14 transaction that occurred between Mr. Toursto and Mr. DiGorga?

15 A In this conversation.

16 Q Right. This conversation.

17 You say, Well, I won't, line 1 on page 3, and
18 DiGorga says, it's three years. In fact, he says, on line 4,
19 Four years and I'm going pay it, which implies that
20 Mr. DiGorga owes somebody money now, doesn't he?

21 A Yes.

22 Q Who did he owe that money to?

23 A I guess my father, at this point.

24 Q Further on down the page, DiGorga says, page 3, line 15:
25 I swear on my mother, he came to me and he asked me for money

J. Franzese - cross/Colon

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1 for the fuckin', unintelligible, thing.

2 You ask, line 17: Oh, the jean shit? DiGorga, 18:
3 Okay? Not the jeans, the underwear. Next line, all right,
4 right, right off the Internet? DiGorga says, right? You say,
5 yeah.

6 DiGorga says on line 22: I said to him, Joe, get
7 the fuck outta here. I'm not giving you no money, take a
8 walk. Your dad came in and sat down with me in the restaurant
9 and --

10 What was Joe DiGorga referring to -- who was Joe
11 DiGorga referring to when he says, I said to him, Joe, get the
12 fuck outta here?

13 A He was referring to Joe Toursto.

14 Q So Joe DiGorga is telling Joe Toursto get out of here,
15 I'm not giving you any money, as opposed to asking Joe Toursto
16 for money, right?

17 A Yes.

18 Q And one line down, DiGorga says: And he says, take care
19 of it because I got a piece of that. I says, you sure? He
20 said, yeah, I got 20 percent of that business. Toursto came
21 in, I handed him 16 thousand cash, then he asked me if he
22 could use two of my girls to model the thing. I said, Listen,
23 I don't control the girls.

24 What is your understanding of that statement by
25 Mr. DiGorga in terms of 20 percent of the business that he was

J. Franzese - cross/Colon

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1 referring to?

2 A What did Joe DiGorga mean by saying that?

3 Q Yes, 20 percent of the business.

4 A I think he was referring to my father being involved with
5 Joe Toursto.

6 Q Your father, Sonny, had invested money in Joe Toursto's
7 endeavors or enterprises; correct.

8 A He was referring to being 20 percent partners with Joe
9 Toursto.

10 Q Right, 20 percent partnership; that doesn't imply that
11 there was a loan involved necessarily, does it?

12 A Does 20 percent partnership imply that? No.

13 Q In fact, 20 percent is an investment by your father in
14 Joe Toursto's business; correct?

15 A I'm not sure exactly the workings of their deal was.

16 Q When you talk about loans in the world of organized
17 crime --

18 A Yes.

19 Q Do people talk about 20 percent other than points?

20 A 20 percent sometimes was a business deal that you get
21 paid on, he's going to pay me 20 percent.

22 Q It wasn't a loan, it was an investment by your dad?

23 A I'm not sure what they were referring to exactly. I know
24 that whatever happened, Joe lent him the money because my
25 father told him he had 20 percent of the business.

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1 Q Rather, more like Joe --

2 A No, Joe did not invest in Joe Toursto's business, that's
3 a fact.

4 Q Joe D did not, but Joe gave Joe Toursto the money because
5 it was an investment on the part of your father, correct?

6 A Joe D gave Joe Toursto a shylock loan and charged him
7 interest on that loan.

8 Q It doesn't say that there, does it?

9 A You asked me. I'm just answering what you asked me.

10 Q That paragraph talked about an investment by Sonny
11 Franzese of 20 percent, right?

12 A Talks about the transaction that happened between Joe
13 Toursto, Joe D, and my father.

14 Q And the 20 percent, right?

15 A It mentions 20 percent.

16 Q Right. That your father had in that business; correct?

17 A That my father had something to do with Joe Toursto's
18 business, yes.

19 Q It doesn't mention anything about a loan there, does it,
20 the word specifically, a "loan"?

21 A The word "loan" is not used in there.

22 Q Then Joe says -- actually, you say in line 7: You gotta
23 work a deal out, and DiGorga says, You gotta work a deal with
24 him. So he offered the girls 25 hundred dollars to do the
25 fuckin' deal. The girls tells him I can't model this like

J. Franzese - cross/Colon

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1 this, like you wanna go on TV. I'm naked under here. She
2 said, my pussy's sticking out, so he said no, no, no, it's
3 gonna be good. She goes, when you put the bright lights on,
4 these girls know what they're talking about.

5 You recall that part of the conversation, right?

6 A Yes.

7 Q Then later on Joe says, two lines down, 17, he says, No,
8 no, no, so he gives them a check. Two lines later, DiGorga:
9 So the fuckin' checks bounce.

10 Two lines later on 21, So the girls --

11 MS. NASH: Could we have a brief sidebar?

12 THE COURT: Yes.

13 (Continued next page.)

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J. Franzese - cross/Colon

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1 (Sidebar.)

2 MS. NASH: Judge, I have been trying to avoid doing
3 this, but at this point, under the rules, Rule 611, to avoid
4 needless continuation of time, could we at least direct --

5 THE COURT: I'm waiting for your objection. I think
6 this jury is looking at you, Mr. Colon, wondering why is he
7 doing this, why?

8 MS. NASH: It has to be reasonable --

9 MR. COLON: I understand your advice or admonition
10 earlier on, but this bottom line explains whatever it is that
11 Joe DiGorga did that --

12 MS. NASH: You have to direct him to certain parts
13 of the tape instead of reading the transcript. I tried to
14 refrain from objecting.

15 THE COURT: Mr. Colon, what does this mean to you?
16 He tells you what he thinks it means. Then you said, Well,
17 does he use this word or that word?

18 If you didn't ask him what he thought it meant, you
19 wouldn't have to show that what he thinks it meant is this.

20 By the way, this is not peculiar to you. I have the
21 same issues with the other defense counsel. I am really loath
22 to utilize the power, as Miss Nash points out, I have under
23 611 because I let lawyers run their cases. This is going on
24 and on. I don't think you're scoring any points here.

25 MR. COLON: If I may?

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1 This has been a witness who continuously throughout
2 this trial has had to be admonished by the court in terms of
3 giving narrow answers, yes and no. That's what I'm trying to
4 pin him down to.

5 If I give him these open-ended questions he's going
6 to run far afield and it's probably not going to be an answer
7 that I'm going to like since he has a bad habit of going on
8 and not answering the questions.

9 This is a major tape and it's last one. All the
10 other ones are short and I won't go much -- I won't go beyond
11 this, you know, this tape, but I've got to get this out.

12 MS. NASH: My point is, you can direct him to
13 certain parts and ask him about that part.

14 THE COURT: You don't have to -- the jury has it in
15 front of them, they see it. You see that part? What did you
16 understand that part to mean, instead of reading the whole
17 thing.

18 While you are right to the extent that the witness
19 has not always confined himself to the narrow question that is
20 being asked, he has been much better about that with you than
21 he was with the other lawyers and this last hour, he's given
22 you yes or no answers to just about everything except when you
23 ask him for something more.

24 So I have no objection. I'm not making any rulings
25 right now, but I am putting defense counsel on notice, we have

J. Franzese - cross/Colon

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1 to move this thing alone.

2 MR. COLON: Fine.

3 (Open court.)

4 BY MR. COLON:

5 Q As you testified earlier, you are aware that Mr. Toursto
6 bounced checks with respect to this venture to both the young
7 ladies and your nephew; yes?

8 A Yeah, I know he didn't pay my nephew and Joe said he
9 bounced a check with the girls, so, yeah.

10 Q Now, going to page 8, 117, line 8. You made the
11 statement, line 8: Wanna, wanna, could you do me a favor?
12 The other thing I need, if you can. Look, I, I, I told ya at
13 the beginning I had some differences with you for no reason.

14 Would you tell the jury what you meant with respect
15 to those differences, what you meant by that.

16 A Just a personality conflict over something at the Hustler
17 Club, I guess.

18 Q What was that?

19 A I didn't like the way he way -- people were getting
20 treated, I guess. I thought he could have done more.

21 Q You wanted him to be more forceful with respect to the
22 Hustler Club, huh?

23 A I wanted him to extend the same courtesy he had for
24 himself with others. That's all.

25 Q You wanted him to threaten people?

J. Franzese - cross/Colon

904

1 A No, I wanted him -- it was over letting people in the
2 door.

3 Q What did that have to do with you?

4 A Well, I had -- sometimes I went there and that's all, I
5 just -- that's what I was talking about.

6 Q On line 16 it says: In any event, but you know, now my
7 dad, ya know, you're so close with my dad as well, so I might
8 as well help ya because truthfully my dad is lax. He wants
9 this Joe Toursto, he wants us to do it but he's lax too I
10 figured.

11 What did you mean by that?

12 A There was a whole lot of stuff going on here. I was
13 referring to --

14 MS. NASH: Objection.

15 THE COURT: No. Overruled.

16 The question is what did you mean by that?

17 A I meant that we're taking our time with Joe Toursto.

18 Q You mean Joe D was taking his time with Joe Toursto,
19 right?

20 A It just seemed the way these guys talked about Joe
21 Toursto and how much he owed everyone that they were taking
22 their time.

23 So I just -- it looked to me after them discussing
24 it with me, I kept saying, well, it was pretty lax over here.
25 You guys talk about this a lot but you never do anything.

J. Franzese - cross/Colon

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1 Q So Joe wasn't acting on your request or your orders, was
2 he?

3 A We were just talking together about this.

4 Q Joe wasn't doing what you wanted him to do, isn't that a
5 fact?

6 A I threw a topic up, Joe responded to it.

7 THE COURT: Mr. Franzese, you need to answer the
8 question narrowly.

9 Is it correct that Joe wasn't doing what you wanted
10 him to do, yes or no?

11 THE WITNESS: Yes.

12 Q And you'll agree with me that Joe -- that you and
13 Mr. Catapano thought that generally Joe was stalling most of
14 the time, holding off on you, right?

15 A We thought -- yes.

16 Q And, in fact, you believed that what was going on in the
17 Hustler Club was out of order, isn't it a fact?

18 A Yes.

19 Q And did you know that Joe was involved in many consulting
20 ventures as an adult club, either owner, manager, including a
21 place like the Habitat; correct?

22 A No. I think -- is the Habitat on Long Island? Is that
23 the place you're talking about?

24 Q I don't know, I've never been there. Do you know where
25 it is?

J. Franzese - cross/Colon

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1 A No, a fellow named Guy owns it, I know about the first
2 time Joe talked about it to me.

3 Q That was the subject of a conversation on or about
4 December 29 of '05, in page 128 D, correct?

5 A I don't remember the time and the place, but I remember
6 that Joe did have a conversation with me about something about
7 the habitat and how he would want to run the club.

8 Q Right, but that conversation had nothing to do with
9 shaking anyone down, did it?

10 A That conversation --

11 Q Yes or no?

12 A Well, I can't say that.

13 Q Well, I'm at the September 29, '05 conversation. Did
14 that have anything to do with shaking the habitat down by Joe
15 D?

16 A Any conversation regarding the Habitat, I can't say if
17 him or anyone else was interested in shaking them down at that
18 point.

19 Q Let's --

20 A Or were involved in a shakedown.

21 Q Let's look at 129 B, the Habitat conversation, September
22 29, page two, line 20. You say: All right, what do you want
23 to do, you want to do something? And what is Mr. DiGorga's
24 response?

25 A What do you want to do -- he said he had no girls and he

J. Franzese - cross/Colon

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1 needed help over at the Habitat.

2 Q So that is essentially what the guy, Guy, this individual
3 named Guy wanted, he wanted Joe's help with obtaining the
4 services or getting dancers for the club, isn't that a fact?

5 A This was one of the discussions about the Habitat, yes,
6 that I had with Joe.

7 Q And, in fact, Joe had to see what the operation was like
8 so that he could staff the place accordingly, isn't that a
9 fact?

10 A Yes, I believe that was his reply.

11 Q That's what this conversation was all about, wasn't it?
12 I draw your attention to -- you haven't answered.

13 A I don't know if that's all it was about. Well, let's
14 look at page 3 line 14. DiGorga: I got a -- the operation, I
15 don't even know what he's got. He's got a fuckin' guy there,
16 a guy who's working for him as a manager, John, is an
17 alcoholic.

18 What did Joe DiGorga mean by that?

19 A Yes, he was discussing how the operation was going.

20 (Continued next page)

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John Franzese-cross-Colon

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1 EXAMINATION CONTINUES

2 BY MR. COLON:

3 Q Anything there in that conversation on September 29th
4 about shaking the Habitat down?

5 A No, not in this conversation.

6 Q Any conversation that's on tape?

7 THE COURT: Asked and answered.

8 Let's have the next question, please.

9 MR. COLON: I think I'm almost done, actually. I
10 will start wrapping up.

11 THE COURT: Okay.

12 Q Let's go back to a couple of things that I didn't get
13 into earlier on.

14 When you started your testimony a few days ago and
15 there was a question posed on direct about your drug use and
16 you gave an answer somewhere along the lines of, it wasn't
17 anything I did.

18 Do you recall that?

19 A No, I don't know in what context.

20 MR. COLON: May I approach the witness, Judge?

21 THE COURT: You may.

22 Q Mr. Franzese, I am just going to show you page 234, just
23 read those lines on page 234. See if that refreshes your
24 recollection as to what you said on direct.

25 (Pause.)

John Franzese-cross-Colon

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1 A Oh, in regards to me stopping using drugs? Is that
2 what -- that's in reference to? How I stopped? When I
3 stopped?

4 Q Specifically with respect to, it wasn't anything you did?

5 A In regards to was it me personally, stopping, having the
6 ability to stop drugs by myself, on my own will power.

7 Q You were asked this question and you gave this answer,
8 correct me if I am wrong?

9 Page 34, line nine -- page 234, I apologize, line
10 nine.

11 Question: Can you explain how you stopped?

12 Ten: Answer: I had been drinking and using drugs
13 for a real long time in my life and well, I don't think it was
14 anything I did. I think I'd rather leave it at that.

15 What do you mean by that?

16 Do you recall being asked that question and giving
17 this answer?

18 A Yes, I do.

19 Q What did you mean by that?

20 A I meant that what I believe is that there is a certain
21 moment or time when you cross the line as an addict or an
22 alcoholic, when nothing but something beyond yourself can help
23 you get sober again. I think that's more involved with grace
24 than it is on any efforts of self-determination at that point
25 that had failed me. I wouldn't have been able to stop on my

John Franzese-cross-Colon

910

1 own.

2 Q You also testified back on June 9th that when you decided
3 to turn your life around, it was the right thing to do.

4 Yes?

5 A I don't take any credit or virtue out of that, that I
6 decided to. Something happened to me that was different at
7 that moment than my whole life had been, and I guess I was
8 just ready, and at that moment I just accepted something that
9 happened to me instead of turning away from it.

10 Q That was about 2003 or 2004?

11 A That was 10/9/01.

12 Q That was October of 2001 when --

13 A October 9, 2001.

14 Q Right.

15 When was the right thing to do, in terms of your
16 cooperation with the government, you -- you testified that the
17 reason why you are cooperating is because it was the right
18 thing to do?

19 Yes?

20 A I said there are a lot of things that had happened to me
21 and it seems -- it still seems like the right thing to do, as
22 hard as it is to do.

23 Q In 2003 or 2004, the government did not come knocking on
24 your door for you to cooperate, did it?

25 A I think they did make the first phone call. I am not

John Franzese-cross-Colon

911

1 sure if I called or they called, honestly.

2 Q You can't tell the jury whether on your own you went to
3 the government or the government -- the government went
4 looking for you in '03 or '04?

5 A Well, the first time, if you are talking about the LA
6 County Sheriff's Department, another alcoholic that I had been
7 working with introduced me to these two sheriffs that I got
8 friendly with, and in that somehow a turn of events came that
9 a friend of my father's came around and tried to start selling
10 pot to people I was sober with and I just figured I didn't
11 want that to be part of my life.

12 Q Okay. But --

13 A I didn't know what else to do.

14 Q It wasn't the federal government that was seeking you out
15 at that point?

16 A At that point, no.

17 Q When you made the decision to go -- strike that.

18 When you made the decision to reach out to the
19 federal government, that was you yourself that made that
20 decision independent of any other force, correct?

21 A I had asked them for help.

22 Q Okay. You weren't -- were you facing any criminal
23 charges at that time?

24 A No.

25 Q So nobody was pressuring you or holding over your head,

John Franzese-cross-Colon

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1 let's say, some sort of quid pro quo between dropping the
2 charges if you would cooperate?

3 A Dropping what charges?

4 Q Any charges that were pending or could be pending.

5 A That wasn't why that happened.

6 Q In fact, you hadn't committed a crime in really many
7 years that you could be prosecuted for, correct?

8 A I would believe that at that time.

9 Q When you came to the government knocking on their door --

10 A That was my belief.

11 Q In 2003, 2004, when you came to the government knocking
12 on their door to cooperate against your father and the rest of
13 the -- your family members or friends, you had no exposure to
14 any criminal conduct at that point, did you?

15 A There were things that did come up in those times, I
16 guess. But I had no personal -- I was trying to do something
17 different.

18 Q Did you seek out the services of an attorney when you
19 approached the government?

20 A Which time?

21 Q In 2003, 2004.

22 A No, I don't believe so at all.

23 Q But you were given an attorney when you signed the
24 cooperation agreement?

25 Yes?

GR

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John Franzese-cross-Colon

913

1 A Yes.

2 Q In that agreement you actually committed yourself to not
3 committing any crimes?

4 A Yes, I guess so.

5 The government ain't going to let me commit any
6 crimes.

7 Q The agreement said any crimes, is that correct?

8 A Yeah, any kind of crime.

9 Q It didn't say you couldn't commit any violent crimes
10 which you testified to the other day. It said you couldn't
11 commit any crimes.

12 Correct?

13 A I meant during the investigation, I was told as long as
14 this investigation could continue, as long as I did not
15 personally get involved in any violent crimes, the government
16 had to immediately arrest everybody.

17 MR. COLON: One second, if I may, Your Honor?

18 THE COURT: All right.

19 MR. COLON: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 MR. COLON: I am approaching with 3500-JF-1.

22 Q Can you tell me if you look -- I believe it's paragraph
23 five -- okay. I am going to give you the whole document here.

24 A Okay.

25 Q I think it's paragraph five that is the operative

John Franzese-cross-Colon

914

1 paragraph.

2 Can you tell us -- tell the jury whether the
3 agreement was to commit -- to not commit any crimes or just
4 violent crimes?

5 A Must not commit or attempt to commit any further crime.

6 Q It doesn't -- thank you.

7 A It doesn't specify.

8 Q It --

9 THE COURT: Mr. Colon, you asked him, was it any
10 crime. He said yes. You have shown him the agreement. He
11 agrees it says any crime.

12 Move on to something else.

13 MR. COLON: Thank you.

14 Q You testified that you were on Medicaid at one time, is
15 that a fact?

16 A Yes.

17 Q When was it that you became eligible for Medicaid?

18 A In 1990, when I applied for disability, ever since then,
19 automatically, whatever state you live in, because when I
20 finally got approved for Medicare, I automatically through the
21 state get some kind of state thing that goes through it. I
22 don't even have to do anything, generally.

23 Q So your health -- your -- what I would say, your
24 principal manner of health care for health insurance is
25 Medicaid?

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John Franzese-cross-Colon

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1 A Medicare.

2 Q Medicare?

3 A Yes.

4 And the Medicaid in like New York and California.

5 In certain states automatically becomes effective when you
6 move or become a resident of the new state. But it's not like
7 that all over the country.

8 Q What are the eligibility requirements for Medicaid or
9 Medicare, if you know?

10 A For me, the --

11 MS. NASH: Objection.

12 THE COURT: Sustained.

13 Next.

14 Q Is there an income eligibility requirement, if you know?

15 MS. NASH: Objection.

16 THE COURT: Sustained.

17 Q So that's -- that's a government entitlement program that
18 the taxpayers pay for, correct?

19 A Yes.

20 Q Did you at any time, especially since you have told us
21 that you have been on Medicare or Medicaid since 1990, did you
22 at any time report to Medicaid or Medicare the payments you
23 received from the government?

24 MS. NASH: Objection.

25 THE COURT: Sustained.

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1 Q Did you at any time while you were in California at all
2 use steroids?

3 A I told you this yesterday. I'm still using steroids as
4 per protocol for my diagnosis.

5 Q So it's -- they are legally prescribed?

6 MS. NASH: Objection.

7 THE COURT: Sustained.

8 Q Did you ever traffic in steroids?

9 MS. NASH: Objection.

10 We have been through this.

11 Q Other than for your own use?

12 THE COURT: All right. Let's have a side bar.

13 (Continued on next page.)

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1 (Side bar.)

2 THE COURT: May I have a proffer for the good faith
3 basis for this question, please?

4 MR. COLON: The -- besides the fact that he may have
5 put out a ruse that he was using steroids while he was trying
6 to undertake this endeavor.

7 THE COURT: You asked him if he ever illegally used
8 steroids.

9 MR. COLON: Yes.

10 THE COURT: What's your good faith basis for
11 thinking that he has?

12 MR. COLON: Judge, I was told by a source, I can
13 reveal that source but it would be -- it would violate any
14 attorney-client privilege, that he used to take steroids and
15 bought steroids or got steroids from -- from illegal activity,
16 even prior to this situation.

17 THE COURT: He's already been asked about that.

18 MR. COLON: Then I will move. I will move along.

19 THE COURT: The objection is sustained.

20 (Continued on next page.)

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1 (In open court.)

2 CROSS-EXAMINATION CONTINUES

3 BY MR. COLON:

4 Q Now, you had a sister, did you not, by the name of Gia?
5 Correct?

6 A Yes, I did.

7 Q And did your sister use drugs?

8 MS. NASH: Objection; relevance.

9 THE COURT: Sustained.

10 Q Did you supply your sister with drugs, yes or no?

11 A No.

12 Q Isn't it a fact that you helped cause her death by giving
13 her drugs?

14 MS. NASH: Objection.

15 THE COURT: Sustained as to form.

16 Q Did you provide the drugs that resulted in your sister's
17 death?

18 A My sister died in Florida. I was in New York.

19 Q She died of what cause?

20 A Here is what you may be talking about. She called me the
21 night she was not feeling well and I was getting high.
22 Instead of talking to her, I told her I'd call her back. She
23 died after that.

24 Q You never did?

25 A No. I was getting high.

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John Franzese-cross-Seltzer

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1 Q That was more important than --

2 MS. NASH: Objection.

3 THE COURT: Sustained.

4 Any more questions, Mr. Colon?

5 MR. COLON: One more.

6 Q Sunday is Father's Day, isn't it?

7 MS. NASH: Objection.

8 THE COURT: Sustained.

9 Ms. Seltzer, any questions?

10 MS. SELTZER: Yes, Your Honor.

11 THE COURT: Please, proceed.

12 CROSS-EXAMINATION

13 BY MS. SELTZER:

14 Q Good afternoon, Mr. Franzese.

15 The first transcript that has been marked into
16 evidence by the government is dated March 2005. Is that when
17 you started recording undercover transcripts for the
18 government?

19 A If that's the first transcript, yes.

20 Q Do you have any idea as you look back on those years how
21 many recordings you actually made for the government?

22 A Actually, I don't recall the number.

23 Q Well, do you have any idea how many times you went out
24 wearing a recording device that was being used to record the
25 people you were meeting with?

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1 A I don't have an idea to a number for that. It was often.

2 Q For how long was it that you were going out recording
3 people?

4 A All right. Now I am going to say eight months, but I
5 could be wrong.

6 Q So it started in or about March 2005?

7 A I guess so.

8 Q And for the next eight months, how many times a week
9 would you go out with that recording device recording the
10 people who you met with?

11 A As many times as I had appointments to go out.

12 Q Would that be 7 days a week?

13 A If I had to, yes.

14 I can't say like hey, this week we are going to do
15 this five days and I have to do this six days. Some days I
16 got to stay home for four days.

17 Q Mr. Franzese, you were living in New York at the time?

18 A At first I was going back and forth and then they wanted
19 me to get an apartment in New York and a car there, to stay
20 there longer.

21 Q Mr. Franzese, was it fair to say that you were recording
22 five days a week for those eight months?

23 Would that be a round about number?

24 MS. NASH: Objection.

25 THE COURT: Overruled.

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1 A No. Because there was no set period of time.

2 Q Well, was it three times a week?

3 A Some weeks were three times, some were six times, some
4 were twice.

5 Q So say an average of four days a week, six months, or
6 eight months?

7 A That's a good assumption, yes.

8 Q So there were hundreds and hundreds of telephone
9 calls -- excuse me -- of conversations that were made over the
10 period of eight months after March 2005, hundreds of them?

11 A We made a lot of recordings. We didn't always record.

12 Q You turned on the device when you were meeting with
13 people hundreds of times over that eight-month period, yes or
14 no?

15 A A lot of times.

16 Q After you were finished meeting with the people who you
17 were recording, you would meet with Agent Lewicki or another
18 FBI agent, yes or no?

19 A Generally following the meeting, if not the next day or
20 morning.

21 Q At that time would they debrief you about what you had
22 discussed with the people with whom you had met?

23 A Well, we would talk about it. Then they'd have to listen
24 to it and sometimes I was told --

25 Q Please listen to my question.

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1 A Okeydoke.

2 Q When you met with Agent Lewicki or another FBI agent
3 after you had made a recording, did you have a conversation
4 with them about the meeting that you had recorded, yes or no?

5 A Generally so, yes.

6 Q And they would take notes about the meeting, about what
7 you told them about the meeting?

8 A Well, sometimes because other times they had the tape.
9 They'd just go listen to the tape.

10 Q Were there oftentimes when the tapes were inaudible?

11 A They never really told me --

12 Q Well, they --

13 A -- if that was the case.

14 Q Were there times that you were recording when you were in
15 bars or restaurants with background noise?

16 A Sometimes I think they said to wear it in the front
17 pocket, not in my pants pocket.

18 Q In any event, the tapes that have been played here in
19 court, is it a fair statement to say, are but a small number
20 of the total number of recordings that were made during that
21 eight months period?

22 Yes or no?

23 A I wouldn't say a small number.

24 Q You would say a large percentage?

25 A I would say a big part, yes.

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John Franzese-cross-Seltzer

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1 Q Before you came -- well, withdrawn.

2 The -- there were transcripts that were prepared as
3 an aid to understanding those tapes. You are aware of that?

4 A This is the transcript, yes.

5 Q Did you prepare those transcripts?

6 A No.

7 Q Did somebody from the FBI or the US Attorney's Office
8 prepare those transcripts?

9 A I believe it's someone from the United States Government.
10 I think the FBI has a -- someone that does this. I don't
11 know.

12 Q Before you came to testify for these proceedings, did you
13 meet with these US Attorneys or other people from their office
14 to discuss your testimony?

15 A To discuss the -- the tapes, yes.

16 Q Did you also discuss the testimony that you were going to
17 give here in the courtroom?

18 A No.

19 We went over the tapes.

20 Q When you went over the tapes, did you listen to the
21 tapes?

22 A Yes.

23 Q Did they show you the transcript that had been prepared?

24 A Yes.

25 Q Did they ask you if you -- if you understood what was

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1 being said in the transcript and whether it was a correct
2 rendition of what had been said?

3 A Yes.

4 Q Did you -- did they ask you to fill in any words?

5 A Not really.

6 Q Did they ask you to describe for them what had been said
7 during those particular conversations?

8 A Sometimes I reiterated to them what I was saying, what I
9 heard.

10 Q So that when you testified here this week and the
11 government prosecutor asked you what did you mean when you say
12 this and what did you understand the other person to mean,
13 your recollection has been refreshed by the government before
14 you came in to court to testify here?

15 A My recollection was refreshed by the tapes and this thing
16 here.

17 I was surprised at how much they didn't know though.

18 Q The point is that you are talking about conversations or
19 these transcripts are about conversations that happened four
20 years ago --

21 A Yes.

22 Q -- or more?

23 And you don't necessarily remember off the top of
24 your head about these specific conversations, do you?

25 A Absolutely.

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1 Q You absolutely remember each conversation?

2 A No, absolutely you are correct. Some of them I was -- it
3 took a while to refresh my memory.

4 Q But then once you read the transcript and you listened to
5 the conversation and you talked to the government, you
6 remember what happened?

7 A You see they made me listen first and then read. They
8 wouldn't let me read it without listening to it.

9 Q Do you know the expression, a give up robbery?

10 A A what?

11 Q A give up robbery?

12 A I --

13 MS. NASH: Relevance?

14 THE COURT: Overruled.

15 Let's see where you are going.

16 A A give up robbery?

17 Q Yes, a give up robbery.

18 A I would think it's either an easy robbery or where
19 someone is in on it and just gives you the money.

20 Q Correct.

21 A Okay.

22 Q Relating to that second example that you have given, do
23 you have any other terms that you use to describe that
24 particular scenario?

25 A Not offhand like that, not now, not at this minute.

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1 Q But you are familiar with that term?

2 A Right now, yes.

3 Q Now, you were asked questions about a fellow named Ori
4 Spado?

5 A Yes.

6 Q Do you know him?

7 A Yes.

8 Q He's somebody you knew in California?

9 A Yes.

10 Q Did he live in California?

11 A Yes, he did.

12 Q How long in California did you know him for?

13 A I knew Ori since 1978 or '76, '75.

14 Q Was that in New York or in California?

15 A I met him in New York. He's from Utica. He moved to
16 California there shortly after in the eighties.

17 Q Now, Mr. Spado was involved in various businesses, is
18 that correct?

19 A I never seen one legitimate business he was in.

20 Q So you are not aware that he was also in the movie
21 business?

22 A Ori Spado?

23 Q Ori Spado.

24 A I am not. I am not aware of it.

25 Q Were you aware that he was involved in some way in the

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1 entertainment business on the Queen Mary cruise ship out in
2 California?

3 A Yes. That I do remember. He did something there.

4 Q Are you aware that he was involved in any way in the
5 entertainment business?

6 A Not really.

7 Q Are you involved -- are you aware that he was involved in
8 any respect in the movie business?

9 A None at all.

10 Q Are you aware that he was involved in any respect in the
11 music business with rap artists?

12 A The only people Ori knew in the rap business were people
13 I introduced him to.

14 Q Those were -- some of them were involved in rap?

15 A They were drug dealers.

16 Q Were there any people involved with rap music?

17 A They were drug dealers who managed rap artists, yes.

18 Q Was he involved also with Andrea Bocelli in booking shows
19 for him?

20 Did you know that?

21 A No, I did not know that.

22 I wish I did.

23 Q You prefer opera to rap?

24 A No; but I would like to meet Andrea Bocelli.

25 Q Let me direct your attention to one of the government

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1 tapes. That's 118 A. That's on August 14, 2005.

2 Mr. Franzese, would you open your book to that
3 conversation?

4 A Yes.

5 What page? I'm sorry.

6 Q It's T 118 A.

7 A Yes.

8 Q As you just told us, you now recall these particular
9 conversations because your recollection has been refreshed?

10 A It's easier to recall, yes.

11 Q Do you recall where this conversation took place?

12 A No, I don't.

13 Q Well, it took place in New York State?

14 A I think this was one of the trips Ori made into New York
15 but I could be wrong. For some reason it's letting me think
16 that.

17 Q So you -- you recall the conversation but you don't
18 recall where -- even in what state it occurred?

19 A Yes. I don't remember at this time.

20 Q It could have been in California?

21 A Yes, it could have been there.

22 Q Now, I am going to direct your attention to page three of
23 the transcript of that conversation.

24 A Okay.

25 Q By the way, were you -- were you aware that Mr. Spado

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1 actually lived in California, right?

2 A Yes.

3 I was over his house many, many, many times for many
4 years.

5 Q He lived in a condo?

6 A He lived in a condo, yes.

7 Q Whatever -- whatever work he was doing, it was based out
8 of California?

9 A Ori lived in a condo, yes.

10 Q Where?

11 A In Beverley Hills.

12 Q In Beverley Hills.

13 Okay. The government asked you certain questions
14 about what you understood certain lines in this conversation
15 to mean. I am going to do the same thing. I am going to
16 start on page three and I am going to direct your attention to
17 lines 17 through 23, where Mr. Spado says to you, okay. This
18 stuff has been sitting here for 45 days but it's not the real
19 good stuff.

20 It's the garbage stuff.

21 That you pick up for \$300.

22 What did you understand Mr. Spado to be talking
23 about?

24 A He was talking about pot.

25 Q He says to you, line 24, all right. There's a thousand

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1 pounds, twelve hundred, fifteen, I don't know what.

2 And that's marijuana or pot?

3 A Yes.

4 Q And then you say, that the Mexicans have?

5 He says, yeah.

6 When you said that the Mexicans have, what did you
7 mean?

8 A I meant that he was getting it from the -- from the
9 Mexicans that he was talking about, moving up the ladder with
10 the Mexicans.

11 Q Which Mexicans?

12 A I don't know the Mexicans. I only met them once in
13 New York.

14 Q But you knew enough to know that he was dealing with
15 Mexicans?

16 A He said it. He'd been saying it all along. In here --

17 Q Will you just answer my question?

18 You knew that he was dealing with Mexicans, yes or
19 no?

20 A Yes.

21 Q And that's where he was getting his pot from?

22 A Some of it.

23 Q Now, on page four, you say to Mr. Spado, all right. This
24 is at line one. Well, does Larry want you to do, buy it from
25 them? That's what I'm saying. Or move it for them?

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1 What did you mean when you said that and who is
2 Larry?

3 A Okay. At this time I was asking him what he was telling
4 me about the deal so I was trying to figure out what he was
5 telling me he was doing.

6 Q But you brought up the name of somebody called Larry.
7 Who was Larry?

8 A I don't remember at this point. Someone he was dealing
9 with.

10 Q But he didn't talk about anyone named Larry before this,
11 did he?

12 A Yes. I'm sure he did. If I mentioned Larry's name. I
13 just can put my mind on it.

14 Q Now, at line five, you say to him, oh, they'll let you
15 move it without giving them no fucking money. All right.

16 And he says, right. I'm building up the plus --
17 now, the guy who led them to this one is the guy --

18 You say all right.

19 He says, already thought I left, I didn't.

20 Do you understand what he means and what you meant
21 in that four line sequence?

22 A In that four line sequence I can't exactly tell you what
23 we were exchanging for that minute.

24 Q Now, let's go to line 11, lines eleven through 18.

25 You say, Mr. Franzese, he was one of the Mexicans?

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1 Mr. Spado says, it's not one of those Mexicans.

2 MS. NASH: Objection.

3 THE COURT: Sustained.

4 Q Could you explain to us what you and Mr. Spado are
5 discussing in lines eleven through 18?

6 A The crew of Mexicans either from California or the ones
7 in Texas he dealt with and now he's telling me he had -- that
8 someone in Brownsville.

9 Q In other words, you were aware that he was dealing with
10 people in Texas and in Brownsville and in other places for his
11 marijuana business?

12 A He always talked about the group of Mexicans that
13 distributed pot around the country that he sold pot with.

14 Q Now, then Mr. Spado told you, this is another thing that.
15 Do you know what he meant by that?

16 A I believe he is talking about another deal.

17 Q Do you know what other deal?

18 A I think he gets into it later.

19 Q Now, at line 23, he tells you, and will you read lines 23
20 to 25, please?

21 A Yes.

22 Q And do you know what he's saying in lines 23 to 25?

23 A Yes.

24 On the first batch that he was talking about, there
25 is not enough money to make any money that he is happy with.

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1 Q Why was that?

2 A Because it was lousy pot.

3 Q You asked him at line 26, how many partners do you have.

4 And then you said, just two ends?

5 And Mr. Spado said, two ends.

6 What did you understand that meant?

7 A He had two partners.

8 Q In which deal?

9 Was that the deal with the junky bad pot?

10 A Yes.

11 Q I direct your attention to lines five through lines 16 on
12 page five of this transcript.

13 Where Mr. Spado begins, probably had two months to
14 sell it because it's not the best.

15 What do you understand he is saying and you are
16 saying in lines five through 16?

17 A I'm asking him and he's saying he don't -- he'd rather
18 not do that deal because there is not enough money in for
19 him.

20 THE COURT: Ms. Seltzer, at a convenient point I
21 would like to take a break. You can continue. When it is
22 convenient in your examination, I would like to take a break.

23 MS. SELTZER: I am sort of right in the middle of a
24 transcript. I am happy to take a break.

25 THE COURT: I don't want to interrupt you in the

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1 middle of the transcript unless you are going to be gong for
2 another hour on this transcript.

3 MS. SELTZER: No. I have very little. If the jury
4 would like to take a break.

5 THE COURT: I'm sure they would. If you are just
6 going to be a few minutes we will not interrupt your line of
7 questioning any more than I already.

8 MS. SELTZER: That's okay. As long as you don't
9 shut me up, I don't mind being interrupted.

10 THE COURT: Ladies and gentlemen, we will take our
11 15-minute break. We will reconvene in here at 3:30. Please
12 remember, don't discuss the case among yourselves or with
13 anyone else. Keep an open mind. We will see you shortly.

14 (The following occurred in the absence of the jury.)

15 THE COURT: Let's have the witness out. I have
16 something for the lawyers.

17 You may be seated.

18 (Witness leaves courtroom.)

19 I thought I had severed Mr. Spado and so I am
20 wondering why we are doing this and I can only assume that's
21 going to have something to do with the credibility of this
22 witness.

23 MS. SELTZER: No.

24 THE COURT: All right.

25 MS. SELTZER: Your Honor, when the government

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1 proffered this particular tape, and I believe it was my
2 cocounsel that had objected to these, the government proffered
3 the tape on the theory that this was -- I don't know if I am
4 using the correct words -- but that I was just getting to the
5 point where Mr. Spado is describing a give up robbery of this
6 marijuana.

7 THE COURT: Right.

8 MS. SELTZER: As I understand the government's
9 theory, and I think that's what they expressed to you when
10 they made their proffer, is that the robbery that my client
11 allegedly committed in California was -- had a modus operandi
12 that was designed by Mr. Spado in which it was analogous to
13 this particular robbery.

14 THE COURT: I got you. You are going to point out
15 the differences?

16 MS. SELTZER: Correct.

17 THE COURT: Okay. That's fine.

18 When are you going to get there?

19 MS. SELTZER: It's the next line. We are almost
20 there. This is a short tape.

21 THE COURT: I probable interrupted at the wrong
22 time.

23 MS. SELTZER: No. They will get the point exactly
24 when they get back, at least.

25 THE COURT: Very good.

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1 MS. SELTZER: There are no other tapes. I don't
2 have any other tapes.

3 MR. LIND: Maybe I could follow up on that? Related
4 but a separate point?

5 THE COURT: Sure.

6 MR. LIND: We just got from the government some
7 tapes relating to Mr. Fatato. Hopefully the last set. What I
8 would like to bring up are two matters.

9 First of all, there may be the same concerns that
10 you just raised with Ms. Seltzer with regard to a lot of these
11 Fatato tapes are just with Spado, dealing with drugs.
12 Basically, marijuana or cocaine transactions.

13 Every one of us has been doing a lot of work really
14 on John Franzese but I would like to have an opportunity to
15 review with the Court before they call Fatato to the stand
16 about the relevancy of a lot of these, what I consider
17 extraneous transactions after he has been severed.

18 MS. SELTZER: I would join in that application.

19 MR. LIND: Can I just finish, Ms. Seltzer?

20 MS. SELTZER: I'm sorry.

21 MR. LIND: My other point is, Ms. Seltzer and I, I
22 think, are the only two defendants that are going to be
23 referred to in the Fatato testimony and without trying to make
24 a big thing about this, I have been carrying sort of the
25 laboring oar in terms of this case because I have to deal with

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1 both of these major witnesses.

2 I would like to have at least 48 hours notice one
3 way or the other whether or not this guy is going to actually
4 be called to testify. I think that's only fair to both me and
5 Ms. Seltzer.

6 THE COURT: I thought agreed, the government was
7 going to give you at least 18 hours notice. They were going
8 to tell you the day before, by noon the day before who their
9 witnesses were the next day.

10 Isn't that what we established?

11 MR. LIND: Yes, Judge.

12 I think this falls into a different category. Once
13 we get past Thursday, then if they want to call him the
14 following week, that's a different matter. But if they are
15 going to call him on Thursday, then I have to start devoting
16 tonight and tomorrow night to Mr. Fatato. Mr. Franzese had a
17 fair amount of 3500. This guy's 3500 is mammoth. It's over
18 2000 pages long. I am not -- I have reviewed it, Judge.
19 Obviously, there is a -- you know, I think that -- that's
20 fair.

21 THE COURT: He does have a point considering how
22 important a witness Fatato apparently is going to be if he is
23 called, that it would be -- it would certainly streamline the
24 trial, I would hope, if the defendants had more notice for
25 that particular witness.

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1 Is the government in a position to do that?

2 MS. POSA: Your Honor, we don't intend to call
3 Mr. Fatato this week. We can even say who we expect our next
4 witnesses to be. We are happy to do that.

5 MR. LIND: That's fine. That's all I am asking for.

6 THE COURT: One at a time, please.

7 MS. POSA: We would like to clarify something.
8 Mr. Lind said that , quote, we just got these transcripts from
9 Mr. Fatato. These are exactly the same transcripts we
10 provided months and months ago. As a courtesy, we provided
11 one complete set. To the extent any have been amended, we
12 have been sending them sort of piecemeal one by one so they
13 have immediate notice of this. As a courtesy, we produced a
14 complete set with a complete disk for all four defendants.
15 There is nothing new that they have to learn. The 3500
16 material they've also had I think for almost two months now.

17 MR. LIND: Judge, I didn't mean to misspeak.
18 Ms. Posa totally -- for once I totally agree with her, okay.
19 Judge, what I was saying is that we did get the final set
20 today. I am not saying -- there is --

21 MS. POSA: Significantly shorter than the prior set,
22 if I may add.

23 MR. LIND: Judge, I didn't mean to imply in any way
24 that they are back-dooring us or giving us something at the
25 last minute here. That was not -- I want to make it very

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1 clear. I think they have been very careful and productive in
2 terms of turning over stuff.

3 What I am saying is that now that we have the final
4 set, I would like to know if this guy is actually -- they have
5 answered that question I think, Judge, that's fine.

6 I still would like to address at some point, you
7 know, this week, whether or not -- you know, at least have an
8 opportunity on behalf of my client, and I suppose Ms. Seltzer
9 would like the opportunity also -- I cut her off before -- to
10 address this issue of these Spado tapes. That certainly
11 is -- that's about half or at least a third of these tape
12 recordings.

13 THE COURT: Okay. He is not going to be called this
14 week. We can address this before we adjourn for the weekend
15 on Thursday. The government may be in a position to give you
16 more information then. The good news is you don't have to
17 work all night tonight and tomorrow.

18 MR. LIND: That's great. Thank you very much.

19 MS. POSA: I could -- I don't want -- if Your Honor
20 wants to move on from this? I could tell --

21 THE COURT: Let me ask, is there anybody else who
22 needs to be heard on that point? I think we have a plan. We
23 will talk about it again Thursday night with regard to Fatato.

24 MS. SELTZER: We will do a motion in limine and give
25 you a list of the tapes that I consider totally drug related

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1 and basically irrelevant to this trial.

2 THE COURT: You can give me a motion in limine.
3 Since the tapes have been in your possession for quite a long
4 time and we had so many motions in limine before, I just -- I
5 would prefer not to have any more. But I am not going to tell
6 you you can't file it.

7 MS. SELTZER: I will just give you a list. If you
8 go through a few of them, 205 A and 205 D, they are just about
9 drugs. It's Spado.

10 MS. POSA: Your Honor, I think I can abbreviate
11 this. I have a little privileged chart here that I did of all
12 the contents. There are only three different conversations
13 involving Spado and drugs out of I think more than 20 that we
14 have produced. To the extent that we have produced those it's
15 to show Spado was charged with Mr. Curanovic in the robbery.
16 He is charged with robbing one of his drug associates. We
17 have to show he that he was in fact a drug dealer who was
18 robbing a drug associate in order to show the entire robbery
19 and how he knew whom to target. That's the only reason why we
20 have this. Literally three separate conversations out of -- I
21 haven't counted them -- out of at least more than 20.

22 MS. SELTZER: I don't think there is any dispute
23 that Mr. Spado was a drug dealer, at least in this trial.

24 THE COURT: Is that a stipulation?

25 MS. SELTZER: Well, I -- from my questions I think

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1 it is clear that we are not disputing that he dealt marijuana.

2 THE COURT: Oh, I don't know that I would draw any
3 inferences from an attorney's questions. If you want to
4 stipulate, we can talk about that. If not, the government has
5 to go ahead and do what they have to do with a reasonable
6 amount of evidence.

7 Am I hearing it correctly, that to the extent
8 Ms. Seltzer has a motion in limine and, Mr. Lind, for that
9 reason, it -- it's only three transcripts that are involved?

10 MS. POSA: It's three conversations and we tried to
11 reduce them as much as possible. So on one of them, for
12 example, on June 4, 2006, we have cut it into three very short
13 little excerpts, rather than playing one long conversation.
14 There are three transcripts but they are each maybe just a few
15 pages long because we were trying to reduce them.

16 THE COURT: Okay. In that case feel free to make
17 your motion.

18 MS. SELTZER: My motions tend to go on and on and
19 on.

20 THE COURT: That's all right. My rulings don't.
21 Okay. One other thing I wanted to mention.

22 I'm sorry. Ms. Posa, you had something else? Were
23 you going to move to something else?

24 MS. POSA: No.

25 THE COURT: Okay. I was handed, as Ms. Posa did on

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1 the record, and I think it was given to defense counsel, the
2 written agreement that this witness has with the marshals, the
3 non-publicity agreement. I assume the government is not going
4 to go into that on redirect unless there is further inquiry
5 now by Ms. Seltzer.

6 Is that right?

7 MS. NASH: Actually, I had planned to go into just
8 confirming the fact that he had this agreement that he was not
9 going to write a book.

10 THE COURT: The problem is that if the defendants
11 had the agreement before cross-examination, they would not
12 have asked the questions about publicity.

13 I think you can tell me if I am wrong, the agreement
14 probably should have been produced to them before the witness
15 was called.

16 MS. NASH: If we had had it. I had no idea it
17 existed.

18 THE COURT: I am not faulting you for it. The point
19 is they would not have asked those questions because to ask
20 those questions, to imply a motive to get book sales or movie
21 rights or TV shows, those questions would have been shot down.
22 As it stands now I don't see any prejudice to the defendants.
23 They have asked the witness. He says they have an agreement.
24 At worst, it's a neutral inquiry.

25 If you are now going to hammer that point by saying

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1 in fact that cannot be a motive because here is the written
2 agreement, then I think the defendants have been a bit
3 surprised by that. As I say, I don't think they would have
4 asked those questions had they known.

5 MS. NASH: I understand Your Honor's point. The
6 possible problem is, at this point, to be perfectly frank, we
7 were a little bit surprised by the defendant's line of
8 questioning and at this point I think that it will leave the
9 jury with an impression that he can still profit by his
10 testimony and he can't. Perhaps we could enter some sort of
11 stipulation so that we don't have to question him about it but
12 the jury is not left with the misimpression that he could
13 continue in any plan he might have had in the past to write a
14 book.

15 THE COURT: I will consider any stipulation that you
16 all work out of course.

17 As I say, if Ms. Seltzer opens the door on it now,
18 having full notice, that would be a different question. I
19 don't anticipate her doing that.

20 I do think, Ms. Nash, that once you turned over the
21 other day the other late document which is the -- I forget his
22 former colleague's name that wrote this manuscript, once that
23 was there, pretty clear to me that the defendants were then
24 going to say, well, you are doing this in order to sell a
25 book, aren't you. Particularly, the questions about you are

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1 now here writing the last chapter, aren't you. Those
2 questions wouldn't have been asked but if they had known that
3 there is a written agreement saying he can't make any money
4 off of this.

5 MS. NASH: Actually, I have a feeling that those
6 questions would have been asked, Judge, in light of the
7 various attempts here to impeach the credibility of this
8 witness. I think that the questions would have been
9 formulated to suggest that whatever he was doing here today
10 was in an effort to get publicity. If not write a book. Then
11 make a name for himself in one way or another. I find it hard
12 possible.

13 THE COURT: We will see if the defendants want to
14 stipulate to a one line stipulation that the witness has an
15 agreement with the United States Government that prohibits him
16 from making any money from the sale of any movie rights or
17 book rights relating to this matter. If they do want to do
18 that, that will end the matter. If they don't want to do
19 that, then maybe I will give you one question and
20 just -- maybe I will give you just the exhibit and that's it.

21 MS. NASH: That would be fine, fine with the
22 exhibit.

23 THE COURT: I am not going to rule on it yet. Let's
24 see how it goes. I did want to alert you to the issue before
25 redirect.

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1 MR. PAUL: Your Honor, obviously the -- your initial
2 ruling and termination with respect to this exhibit is exactly
3 our point and what we would argue. For the government to
4 claim surprise that we went into some type of book possibility
5 for this witness when they turned over the actual document of
6 a transcript that he is writing with another person is a bit
7 beyond what I would say is surprise. So clearly by them
8 providing that document the door was certainly open for us to
9 go through and for them to now claim we didn't think the
10 defense counsel were going to go into the possibility of a
11 book future with this witness is a bit hard to fathom.

12 So I think, Your Honor is correct, had we ever seen
13 what's been marked for identification as 93, the questions
14 would never have been asked of this witness.

15 THE COURT: Obviously, the defendants will at least
16 need to stipulate that they will not argue to the jury in
17 closing that this witness's motivation in testifying was in
18 order to sell a book.

19 MR. PAUL: We would -- I would have no problem with
20 that stipulation. But the -- but for this exhibit to come in
21 or for us to stipulate that there was in fact an agreement
22 when we are now being told for the first time in fact there
23 was one, we are not going to stipulate to that.

24 But I can speak for myself. I am certainly not
25 going to argue to the jury that this person's lying about a

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1 possibility of a book deal and he never had such an agreement
2 when we now know for the first time there was one. I can only
3 speak for myself.

4 THE COURT: How are your clients prejudiced if I
5 give the government two questions saying can you identify this
6 agreement? What is it? He said this is an agreement that
7 says I can't sell my movie rights.

8 MR. PAUL: Judge, we are prejudiced because we would
9 never have even gone into this subject.

10 THE COURT: Right. The jury concludes that's not a
11 valid point. But, of course, in fact it is not a valid point.
12 How are you prejudiced?

13 MR. LIND: Judge, the way that the testimony is now
14 he said he had -- he does have an agreement and I think at
15 that point the questioning ended. About that point. And so
16 there is -- speaking for myself, I join what Mr. Paul said. I
17 don't think defense counsel would have raised it. I didn't go
18 into it. I might have gone into it but I certainly would not
19 have gone into it if I had known that there was an agreement
20 out there.

21 THE COURT: I understand that.

22 MR. LIND: I would agree to stipulate that certainly
23 it would be improper to raise that in defense summation. I
24 would be willing to stipulate to it and agree that won't be
25 raised.

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1 But the government can't have it both ways. I don't
2 think that Your Honor -- Your Honor yourself raised the issue,
3 shouldn't we have had this as part of discovery. Whether or
4 not they should or shouldn't, we shouldn't be trapped by not
5 having it raising it and then their being able to show
6 affirmatively that there is --

7 MR. PAUL: Your Honor, I --

8 MS. NASH: Could I be heard?

9 THE COURT: Let's have all the defendants.

10 MR. PAUL: I would just add, as Your Honor knows,
11 when we went side bar, even the government -- at that point we
12 were inquiring of the witness -- was not aware of such an
13 agreement. In fact, seemed surprised by the witness even
14 claiming there was such an agreement. They then turn over
15 this exhibit, this afternoon, and now for them to be permitted
16 to go into this exhibit with one question, I would object to
17 any question with regard to an exhibit that we are now being
18 provided after the fact. I think it is prejudicial and should
19 not be permitted.

20 (Continued on next page.)

21

22

23

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1 THE COURT: Ultimately if I let in the exhibit, the
2 jury understands the truth, right?

3 That's not always a good thing, but generally the
4 default is that that works. This is not a reason they should
5 not believe this witness. You've all given them lots of
6 reasons they might not, but this isn't one of them. Shouldn't
7 we take it out of the case?

8 MS. SELTZER: I think it goes to the credibility of
9 the defense attorneys.

10 THE COURT: I agree with you.

11 MS. SELTZER: Those questions were asked in good
12 faith. Now it gives the impression that it was not asked in
13 good faith.

14 THE COURT: What if I allow the government to
15 introduce the exhibit and then I instruct the jury that the
16 government had an obligation to disclose that exhibit prior to
17 trial and that defense counsel did not know about that exhibit
18 during the cross-examination?

19 MR. LIND: Then I think it makes both counsel look
20 bad.

21 THE COURT: It must be a perfect solution.

22 MR. LIND: It leaves the court looking bad, which I
23 guess is not the best thing.

24 I would say, I don't think that the questioning
25 stopped when -- you know, when he answered the question. I

1 think it just complicates and confuses this matter.

2 THE COURT: It's still a theoretical possibility --
3 it may be more than theoretical -- that the jury could not
4 believe this witness because they think he's trying to sell a
5 book when that is not the truth. Right? That's the problem.

6 MS. SELTZER: Hypothetically, what happens if he
7 leaves the Witness Protection Program, which is not an unheard
8 of thing?

9 THE COURT: You can argue that the to the jury.

10 MS. SELTZER: I choose not to.

11 THE COURT: Right.

12 MS. SELTZER: But there really is a very real
13 possibility, your Honor, that at some stage when -- for
14 whatever financial reasons he decides he doesn't have to run
15 away, that he decides to leave and write a book. I can see
16 that.

17 THE COURT: How much more examination do you have?

18 MS. SELTZER: Very short, very brief. Could I ask
19 you a question about your Honor's ruling, just to digress?

20 THE COURT: Have I ruled?

21 MS. SELTZER: When I was asking questions and I was
22 reading from the transcripts, I got the impression that your
23 Honor had prohibited that and I wasn't quite sure I understood
24 --

25 THE COURT: I have not prohibited that. I asked

1 counsel to curtail that to the extent possible. When you were
2 doing it, I did not know where you were going with it. You
3 have now advised me out of the presence of the jury and I'm
4 not stopping you from doing it.

5 MS. SELTZER: It's only about half a page, but I
6 would like to use the words.

7 THE COURT: That's fine.

8 MS. NASH: If I could just be heard on this issue
9 with the agreement that he signed?

10 The Marshals Service is not a branch of our office
11 and other than what we specifically requested in the ordinary
12 course, like with respect to the WitSec payments, we are not
13 provided with their documents; in fact, the only reason we got
14 this document was because this door was opened and then
15 because of how the witness testified, you know, we learned he
16 had signed the document.

17 This is nothing that we ever would have had and
18 overlooked for whatever reason. So I think the marshals are
19 not part of the prosecution team. As far as I understand it,
20 they are really more part of -- I think the Bureau of Prisons,
21 but, in any case, my suggestion would be, because I feel that
22 the jury is going to be left with a misimpression -- those
23 questions were -- they weren't two brief questions, they
24 lasted a fairly significant period of time and I think that
25 the jury is going to be misled.

1 I object to the presentation that the government had
2 an obligation to turn it over and did not because in fact this
3 was simply not in our possession and not something that we
4 were required to go out and get until we found out about it.

5 Perhaps a compromise would be to craft some language
6 to indicate it, because I understand the defense didn't have
7 it, and I don't mean to suggest otherwise, so perhaps there
8 would be some way of conveying to the jury that this was
9 something that neither of the parties had in advance and
10 learned about after the witness' testimony on cross, something
11 to that effect.

12 MR. PAUL: Judge, to me the issue raised stops with
13 the witness' testimony. Your Honor is going to instruct the
14 jury, evidence is the question combined with the answer. The
15 witness has stated he has an agreement. End of story.

16 THE COURT: Mr. Paul, you've just spent two and a
17 half days trying to convince the jury that they can't believe
18 one word this witness says.

19 MR. PAUL: Not about this, your Honor.

20 THE COURT: Well, falsus in unum falsus in omnibus.
21 I'm sure someone is going to say that to the jury.

22 MR. PAUL: To say what, that he can't be believed?

23 THE COURT: If they lie about something they can't
24 be believed about anything.

25 MR. PAUL: We're certainly not going to argue, it

1 would not be in good faith for us to argue anything in regard
2 to the book arrangement that has been gone into certainly now
3 for the first time that we're receiving Exhibit 903.

4 THE COURT: Here is I'm going to do. I am going to
5 instruct the jury when they come back that there was some
6 testimony by the witness about an agreement he entered into
7 that prohibits him from earning money as a result of his
8 criminal history.

9 I'm going to tell them there is such an agreement.
10 It does prohibit him. Defense counsel were entirely unaware
11 of that agreement during their cross-examination.

12 That's the truth.

13 MS. SELTZER: Could you maybe do that after I
14 finish, your Honor?

15 THE COURT: Yes, I will do that after you finish.
16 That's the truth. It doesn't make you look bad, it doesn't
17 make your clients look bad and it lets the jury know the real
18 story.

19 MR. PAUL: Again, this topic would have never been
20 broached by anybody had we been provided with the exhibit.

21 I think it's unfair and improper for the suggestion
22 to be made that this was raised by defense counsel at any time
23 because you know we would not have raised it.

24 THE COURT: No one will be harmed based on the
25 instruction I'm going to give; you will not be harmed, the

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1 jury will not think less of you, they will not think less of
2 your clients and they will know the truth, so it strikes me as
3 the right solution.

4 We're now past our break. Let's have the jury back
5 and then our witness.

6 MR. PAUL: Can I take a quick break?

7 THE COURT: A minute and a half.

8 (Recess.)

9 THE COURT: Everyone here? Let's have the jury
10 back.

11 (Witness resumes the stand.)

12 (Jury present.)

13 THE COURT: Be seated, please.

14 Sorry for the slight delay, ladies and gentlemen, we
15 had a small matter we had to take care of.

16 Miss Seltzer, you may continue.

17 MS. SELTZER: Thank you, your Honor.

18 BY MS. SELTZER:

19 Q Mr. Franzese, before the break we were going over the
20 transcript of a conversation between you and Orie Spado on
21 August 14, 2005, number 118 A. I'd like to direct your
22 attention to page 5 line 11.

23 A Right.

24 Q Where Mr. Spado says to you, quote, Throw up my arms and
25 say fuck it, okay? I don't want to deal with it, all right?

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1 I'm walking away and when I do, all right, tell them to get a
2 truck and come to get it, all right. Now, all it is is
3 between Southern State and Sunrise, it's off Grand, so we get
4 to be at least a couple guys.

5 Do you understand what Mr. Spado was saying in that
6 statement?

7 A Yeah, he's planning to tell me how we're going to take
8 the pot from these guys.

9 Q When he described in the next line, Grand, Grand Avenue,
10 it's the location where you're going to take the pot.

11 Was it you who was going to take the pot?

12 A Eventually it turns to, yeah, me being the one to steal
13 the pot from these guys that he walked away to deal with.

14 Q And this is what I referred to before as a give-up
15 robbery?

16 A I wouldn't consider this -- I would consider Orie giving
17 up the guys who had the pot, but I wouldn't consider it where
18 the guy who has the pot turns it over to you.

19 Q He goes on at line 25 to say, All right, now one guy
20 would take the truck, load it up, drive it a little ways.

21 Who would that one guy be, if you know?

22 A One of the original guys that were bringing the load from
23 the Mexicans he was buying it from.

24 Q That would have been one of his partners?

25 A I'm not sure.

J. Franzese - cross/Seltzer

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1 Q Then he says: The Mexicans would get in the truck and
2 start driving. And these guys don't speak English, these guys
3 I seen them, these guys don't, okay? If somebody went like
4 this, flashed a badge.

5 You say, Flash a badge, right? And he says: All
6 right. Okay. More than likely they're gonna run.

7 You recall this conversation?

8 A Yes.

9 Q And, in fact, what Mr. Spado was telling you is that he
10 believed that it would be a group of nonEnglish speaking
11 Mexicans who would be driving that truck with the marijuana?

12 A That would be delivering that, working the order, yeah.

13 Q And he was proposing that you would get a badge and
14 something that looked like a cop car?

15 A Eventually that was the plan on how we were going to rob
16 them.

17 Q And you would flash the badge and they would see the cop
18 car; is that correct?

19 A Similar to that.

20 Q And they would run away because they would be scared?

21 A In general, that was one of the descriptions.

22 Q And basically if this is a modus operandi of Orie Spado,
23 it's that he would flash a badge and scare away the guys with
24 the drugs, he uses a badge and a cop car, that is his modus
25 operandi?

J. Franzese - cross/Seltzer

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1 A For this particular deal.

2 Q Correct?

3 A What he's asking us to do on this deal.

4 Q Correct, yes. So this is an example of how he steals
5 from drug dealers, this is how he was proposing it on this
6 occasion?

7 A On this occasion, this was his proposal. I can't speak
8 for any others.

9 Q Now, at the close of the -- or at some point at the end
10 of your direct testimony, the federal prosecutor asked you
11 about a gun that Orie Spado had sold to you in California. Do
12 you recall that testimony?

13 A Yes.

14 Q And that was an in 2002, wasn't it?

15 A It was somewhere around -- I don't remember the times,
16 but I believe you when you say you know it's 2002.

17 Q Well, it's when you were working for the Sheriff's
18 Department in Los Angeles County, do you recall that?

19 A Yes.

20 Q And that's the gun that you supposedly bought?

21 A If that was what you have in the file, yeah, that's it.

22 Q That was around 2002?

23 A Yes.

24 MS. SELTZER: I have no further questions.

25 THE COURT: All right. We'll have redirect

J. Franzese - redirect/Nash

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1 examination.

2 Before we do that, do the parties need to be heard
3 further on the instruction that he talked about during the
4 break?

5 (No response.)

6 THE COURT: Ladies and gentlemen, there was some
7 testimony during cross-examination of the witness concerning
8 an agreement to which he testified with the government that he
9 is not allowed to make money off of his criminal history or
10 the work that he did for the government.

11 I instruct you that there is in fact such an
12 agreement. I also instruct you that the defense lawyers did
13 not know and could not possibly have known that there was such
14 an agreement until the witness said so.

15 All right. Let's proceed with redirect examination.

16 REDIRECT EXAMINATION

17 BY MS. NASH:

18 Q Good afternoon, Mr. Franzese.

19 A Good afternoon.

20 Q How much of your life did the defendant Franzese spend in
21 prison?

22 A Over 25 years, I believe.

23 Q You were asked questions on cross-examination about when
24 and where you had certain meetings with the defendant
25 Franzese.

J. Franzese - redirect/Nash

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1 Do you recall those questions?

2 A Yes.

3 Q Did some of those meetings occur when you were visiting
4 the defendant Franzese in prison?

5 A Yes.

6 Q Directing your attention in particular to the Cugini
7 Restaurant?

8 A Yes.

9 Q You were asked questions on cross-examination about that
10 restaurant?

11 A Yes, I was.

12 Q Was the defendant Franzese in jail when the dispute over
13 that restaurant occurred?

14 A I believe he was. What did you say?

15 Q At the time the dispute over the Cugini Restaurant
16 occurred, was the defendant Franzese in jail?

17 A Yes.

18 Q What was your understanding of how the defendant Franzese
19 was supposed to be paid as a result of the resolution of the
20 dispute relating to the Cugini Restaurant?

21 A Angelo was with my father, so Joe and Michael took care
22 of his problem and collected money for my father for that.

23 Q When you say Joe, who do you mean?

24 A Joe DiGorga.

25 Q When you say Michael who do you mean?

J. Franzese - redirect/Nash

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1 A Michael Catapano.

2 Q Did you have conversations with the defendant Franzese
3 about whether he actually got paid?

4 A Yes. We had conversations.

5 Q What is your understanding about whether he was paid?

6 A I believe that the money was received -- I think he got
7 ten thousand --

8 MR. LIND: I object to the question and the answer.

9 THE COURT: Sustained as to form.

10 Q Did you have conversations with the defendant Franzese
11 about the resolution of this dispute over the Cugini
12 Restaurant?

13 A Yes.

14 Q What did you learn?

15 A I believe he got some money --

16 MR. LIND: Objection to the form of that question,
17 what did he learn.

18 THE COURT: Yes.

19 MS. NASH: I can rephrase.

20 Q What did the defendant Franzese tell you?

21 A He got some money but he didn't get all of it.

22 Q What is your understanding about where the rest of the
23 money went?

24 A Well, I had a lot of conversations about --

25 MR. LIND: Objection.

J. Franzese - redirect/Nash

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1 THE COURT: Sustained.

2 Q Did you have conversations with Michael Catapano about
3 the rest of the money?

4 A Yes, I did.

5 Q What did you understand from those conversations happened
6 to the rest of the money?

7 A Michael had to lend -- Michael had collected the money
8 and he had to lend a bunch of it to Joe D -- had to give some
9 to Joe D until my father got out, then he was supposed to get
10 it back and pay my father.

11 Michael also at that time had used the money and
12 came and asked me what he should do cause he was nervous on
13 what he was going to tell my father why he didn't have the
14 other 15 thousand for him that he had used.

15 Q When you say "get out," what are you referring to?

16 A He --

17 Q You said I believe, Michael was going to hold it until
18 your father got out. What did you mean?

19 A My father was in jail. When he came home they were
20 supposed to give him the money for that.

21 Q On cross-examination you were shown notes at various
22 times taken by different agents during this investigation. Do
23 you recall that on cross-examination?

24 A Yes.

25 Q Prior to your cross-examination had you ever seen those

J. Franzese - redirect/Nash

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1 notes?

2 A No.

3 Q Were you ever asked to sign any kind of notes like that?

4 A No, I was not.

5 Q You were asked a lot of questions on cross-examination
6 about payments that you received from the government. Do you
7 recall those questions?

8 A Yes, I do.

9 Q And are you currently in a Witness Protection Program?

10 THE COURT: You can answer that.

11 A Yes.

12 Q As part of the Witness Protection Program was it
13 necessary for you to relocate?

14 A Yes.

15 Q You were asked questions on cross-examination about
16 payments you received as part of the Witness Protection
17 Program for documents.

18 Do you recall that?

19 A Yes.

20 Q As part of the Witness Protection Program, did you get a
21 new identity?

22 A Absolutely.

23 Q Other than in court here, are you allowed to use your
24 real name in your life?

25 A No.

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1 Q You were also asked about travel expenses as part of the
2 Witness Protection Program.

3 Do you recall those questions on cross-examination?

4 A Yes, I do.

5 Q Were those travel expenses for vacations for you?

6 A Vacations? No, they're not vacations.

7 Q You were also asked about payments for command posts. Do
8 you have any idea what that term means, "command posts"?

9 A I believe it's a group of people where they stay that
10 generally accompany me.

11 Q Do you have any idea whether your participation in the
12 Witness Security Program, or the Witness Protection Program is
13 affected by whether the defendants are acquitted?

14 MS. SELTZER: Objection.

15 THE COURT: He can answer what he knows, if he
16 knows.

17 A Can you repeat that again.

18 Q Do you have any of idea whether your participation in the
19 Witness Protection Program would be affected by what happens
20 to the defendants in this case?

21 MR. LIND: I'll object to the form of the question,
22 Judge.

23 THE COURT: I will overrule it.

24 We're asking for the witness' understanding as to
25 whether it makes a difference with regard to his participation

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1 in the program whether the defendants are acquitted or
2 convicted.

3 A No, there's not.

4 Q You were also asked questions on cross-examination about
5 how the defendant Franzese, when he is not in prison, is on
6 parole.

7 Do you recall some of those questions?

8 A Yes, I do.

9 Q What is your understanding of what can happen to the
10 defendant Franzese if he's caught while on parole with other
11 members or associates of organized crime?

12 A He would get violated.

13 Q Now, for some of the time that you passed messages for
14 the defendant Franzese, was he in jail?

15 A Yes.

16 Q For some of the time that you passed messages for him,
17 was he on parole?

18 A Yes.

19 Q What is your understanding of the purpose of you passing
20 messages when he's on parole?

21 A To not jeopardize his freedoms because of his
22 restriction.

23 Q You were also asked questions on cross-examination about
24 the defendant John Capolino and The Butcher, an individual
25 known as The Butcher.

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1 Do you recall those questions?

2 A Yes.

3 Q Do you recall being asked questions about what
4 Mr. Capolino needed money for?

5 A Yes.

6 Q Do you recall being asked to compare the defendant
7 Capolino's situation to your situation when you borrowed money
8 from Michael Catapano?

9 A Yes. I do remember that.

10 Q Now, after you borrowed money from Michael Catapano, did
11 you lend it out to other people?

12 MR. PAUL: Objection.

13 A No.

14 THE COURT: Overruled.

15 A No, I did not.

16 Q What is your understanding of what the defendant Capolino
17 did with some of the money that he borrowed from The Butcher?

18 A He lent it back out at points.

19 Q You were also asked on cross-examination whether money
20 that the defendant Capolino borrowed from The Butcher was on
21 record.

22 Do you recall those questions?

23 A Yes.

24 Q Whether or not a loan is on record, does that affect
25 whether the borrower can lend out the money to other people?

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1 A No. He can lend it out. But it's -- it's usually, if
2 the guy's a goodfellow, he's always on record.

3 MR. LIND: Objection.

4 THE COURT: You answered the question.

5 Go on.

6 Q You were also asked on cross-examination about various
7 conversations that you had with the defendant Franzese. Do
8 you recall that?

9 A Yes.

10 Q And you were asked questions about whether the defendant
11 Franzese gave you advise.

12 Do you recall that?

13 A Yes.

14 Q Who gave you advise about loan-sharking?

15 A My father.

16 Q Who gave you advise about shaking people down?

17 A My father.

18 Q Who gave you advise about what to do if someone did not
19 pay what they were supposed to pay?

20 A My father.

21 Q You were asked questions, if you recall, at the beginning
22 of your cross-examination about certain of your prior crimes.
23 Do you recall that?

24 A Yes, I do.

25 Q And you were asked questions about whether certain of

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1 your past crimes were for the Colombo family.

2 Do you recall those questions?

3 A Yes, I do.

4 Q When the defendant Franzese asked you to pass messages
5 for him, was that for the Colombo family?

6 A Yes.

7 Q When the defendant Franzese was involved in
8 loan-sharking, was that for the Colombo family?

9 A A portion of that.

10 Q When the defendant Franzese shook businesses down was
11 that for the Colombo family?

12 A Many times they were.

13 MS. NASH: Can I have a second, Judge?

14 THE COURT: Sure.

15 (Pause.)

16 MS. NASH: I have nothing further.

17 THE COURT: All right.

18 Any recross?

19 MR. LIND: Yes, Judge.

20 RECROSS EXAMINATION

21 BY MR. LIND:

22 Q When you had this conversation about the Cugini Due pizza
23 place with your father, that you had with him in prison?

24 A I don't know.

25 Q What?

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1 A No, because I was in California.

2 Q That was after the event; correct?

3 A Yeah. After -- yes, after he came home.

4 Q Now your father was in prison from 2001 to 2004; correct?

5 A I'm not sure of the dates.

6 MR. LIND: If I could have a moment?

7 THE COURT: All right.

8 (Pause.)

9 BY MR. LIND:

10 Q Let me go down a few lines. Does that refresh your
11 recollection that he was admitted in January 23, 2001?

12 A Okay.

13 Q And he was paroled exactly three years later, January 22,
14 2004?

15 A That's when he was released, yeah.

16 Q So he was in prison from January 23, 2001 to January --
17 nearly exactly three years later, he was paroled.

18 You are aware, you heard the jury -- you testified
19 in front of the jury a number of times about this loan, or
20 this business transaction with Joe Toursto.

21 That occurred in 2002, correct?

22 MS. NASH: Objection, Judge. This is beyond the
23 scope of my redirect.

24 THE COURT: I think so, Mr. Lind.

25 Q You heard, and you knew a lot about this Cugini Due Pizza

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1 transaction, that was brought up on redirect, remember
2 testifying about that on redirect?

3 A Yes.

4 Q Your father was in prison in 2003; correct?

5 A Yes.

6 Q That's when that transaction occurred; correct?

7 A Yes.

8 Q Okay. Now, that transaction occurred in 2003 when your
9 father was in prison, correct?

10 THE COURT: We have that. He just said yes.

11 Next question.

12 Q You didn't come to -- you didn't talk to your father in
13 2003 in prison, did you?

14 A No. I didn't visit him in prison on that -- in that
15 time.

16 Q You didn't visit him the whole year of 2003 in prison,
17 did you?

18 A No.

19 Q You didn't visit him the whole year of 2002 in prison,
20 did you?

21 A I don't believe so.

22 Q You didn't visit him the whole year of 2001 in prison?

23 A Wait a minute. I think I did fly to Michigan in my first
24 year of sobriety to visit him.

25 Q When was that?

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1 A I don't remember, but I'm positive I visited him once
2 because I had to get permission to go.

3 Q And --

4 A We didn't discuss this.

5 Q You didn't discuss the Toursto thing, you didn't discuss
6 the --

7 A No.

8 Q -- the Cugini Due Pizza?

9 A No.

10 Q So what you found out was two years after the event, in
11 2005; correct?

12 A It might have happened a little bit before then. I don't
13 know. I don't know the exact dates, but yes, I heard about it
14 after the fact that it happened. Yes, if that's what you're
15 saying.

16 Q You heard about it from Michael Catapano, right?

17 A He was one of the people I heard it from.

18 Q Now, this advice about loan-sharking, shylocking, that
19 took place in the mid-seventies; correct?

20 A Yeah. Till when --

21 Q You learned about that in the mid-seventies; correct?

22 A And after.

23 THE COURT: He just said yes.

24 Q Okay. And the questions that the prosecutor -- I asked
25 you questions about other types of advice.

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1 Do you recall the questions I asked you and the
2 transcripts I asked you about?

3 A I remember you asked me the question, but I don't
4 remember the questions, but if you tell me I'll answer you.

5 Q The advice that he was giving you on the transcript I
6 referred you to were about other things, how to have some
7 personality -- do you recall that advice?

8 How not to be bitter, how to be nuanced, how to be
9 smooth; do you recall those? That was the advice in the
10 transcripts I was referring to.

11 A Yeah, I think that it was in regards to Joe D. Maybe so.

12 Q That was in regards to you, that was advice to you;
13 correct?

14 A For me it had to be towards other people.

15 Q Right.

16 A Right.

17 Q And in those tapes he was not telling you, instructing
18 you about loan-sharking, was he? You had learned that 35
19 years before, right?

20 A Yes. I had learned that 35 years before.

21 Q And in that 35 years things had changed a lot, had they
22 not?

23 A Yeah, 35 years -- yes, that's right.

24 Q When you met your father in 2005, 2004, he no longer had
25 a Lear jet, did he?

1 A No, that's when he didn't.

2 Q No longer had a big house, did he?

3 MS. NASH: Objection. Beyond scope.

4 THE COURT: Sustained.

5 MR. LIND: Nothing further.

6 THE COURT: Mr. Paul, anything?

7 MR. PAUL: I have no questions.

8 THE COURT: All right.

9 Mr. Colon.

10 MR. COLON: No, your Honor.

11 THE COURT:

12 Miss Seltzer?

13 MS. SELTZER: No, your Honor.

14 THE COURT: The witness is excused.

15 Thank you very much. You may step down.

16 (Witness excused.)

17 THE COURT: Do you have a short witness?

18 MS. NASH: We actually have some stipulations.

19 THE COURT: Let's do that.

20 Ladies and gentlemen, the government is about to
21 read to you some documents that are known as stipulations.
22 Those are agreements between the parties as to certain facts
23 or certain testimony that would be given but is not going to
24 be given.

25 My instruction to you is that when those

1 stipulations are read, as to the facts stated therein, you
2 have to accept those facts as true. The parties have agreed
3 to them.

4 MS. POSA: Your Honor, may I start?

5 THE COURT: You may.

6 MS. POSA: Government Exhibit 600.

7 It is hereby stipulated and agreed by and between
8 the United States of America, by assistant United States
9 attorneys Cristina Posa and RachelJ. Nash, defendant John
10 Franzese, by his attorney Richard B. Lind, Esquire, defendant
11 John Capolino, by his attorney Kenneth A Paul, Esquire,
12 defendant Christopher Curanovic, by his attorney, Marion A.
13 Seltzer, Esquire, and defendant Joseph DiGorga by his attorney
14 Raymond L. Colon, Esquire, that:

15 Paragraph one, Government Exhibit 25 is a true and
16 accurate copy of call detail records, subscriber information
17 and billing records for the period from January first, 2006
18 through May 29, 2006, for telephone number 917 517-4650,
19 subscribed to by John Capolino.

20 Paragraph 2. Government Exhibit 32 is a true and
21 accurate copy of call detail records, subscriber information
22 and billing records for the period from May 2, 2006 to May 31,
23 2006, for telephone number (917) 335-2000, subscribed to by
24 Christopher Curanovic.

25 Paragraph 3. Government Exhibit 33 is a true and

1 accurate copy of call detail records, subscriber information
2 and billing records for the period from January 15, 2006
3 through May 31, 2006 for telephone numbers 310 418-0862 and.
4 310 739-4667, subscribed to by Orlando Spado.

5 Paragraph 4. Government Exhibit 34 is a true and
6 accurate copy of call detail records, subscriber information
7 and billing records for the period from May 15, 2006 to June
8 16, 2006, for telephone number (310) 273-2811 subscribed to by
9 Orlando Spado.

10 Paragraph 5. Government Exhibit 35 is a true and
11 accurate copy of call detail records, subscriber information
12 and billing records for May 19, 2006 for telephone number
13 (323) 997-2646, subscribed to by Dahomey Smith.

14 Paragraph 6. Government Exhibit 38 is a disk
15 containing a true and accurate copy of cellular telephone and
16 sector records for the period from March 1, 2006 through
17 November 7, 2006 for the telephone number (917) 335-2000,
18 subscribed to by Christopher Curanovic. Government Exhibit 38
19 A is a printed excerpt from this disk reflecting calls made on
20 May 18, 2006 and May 19, 2006.

21 Paragraph 7. Government Exhibit 40 is a map
22 reflecting the location of certain cellular towers listed in
23 Government Exhibit 38 referenced in paragraph 6 of this
24 stipulation as having received a signal transmitted to or from
25 cellular telephone number (917) 335-2000 subscribed to by

1 Christopher Curanovic on May 18, 2006 and May 19, 2006.

2 Paragraph 8. Government Exhibit 37 is a true and
3 accurate copy of call detail records for the period from
4 February 21, 2006 through August 24, 2006 for telephone number
5 (914) 774-8581 subscribed to by Beznik Neza.

6 Paragraph 9. This stipulation and Government
7 Exhibits 25, 32, 33, 34, 35, 37, 38, 38 A and 40 are
8 admissible in evidence at trial.

9 That is signed by all counsel on June 7, 2010.

10 THE COURT: You're offering 600 and all those
11 exhibits and the stipulation?

12 MS. POSA: As well as the stipulation.

13 THE COURT: They are received.

14 (So marked.)

15 THE COURT: Miss Posa, what is the exhibit number of
16 the next stipulation?

17 MS. POSA: Government Exhibit 601.

18 THE COURT: I'm going to ask you to skip the
19 preamble.

20 All the parties and all their attorneys agree that
21 the following facts are stipulated to. 601. Let's go right
22 into it.

23 MS. POSA: Thank you, your Honor.

24 Paragraph one. Government Exhibit 29 is a true and
25 accurate copy of a United Airlines passenger report, also

1 known as a flight manifest, listing all passengers on board
2 United Airlines Flight 0033 from New York John F. Kennedy
3 International Airport, JFK, to Los Angeles International
4 Airport, LAX, on May 18, 2006.

5 Government Exhibit 31 is a true and accurate copy of
6 United Airlines passenger report, also known as a flight
7 manifest, listing all passengers on board United Airlines
8 Flight 0028 from LAX to JFK on May 19, 2006.

9 On Flight 0033, the defendant Christopher Curanovic
10 was assigned seat number 22 E and Beznik Neza was assigned
11 seat number 22 F. On Flight 0028 Curanovic was assigned seat
12 number 18 F and Neza was assigned seat number 18 E.

13 Paragraph 2. Government Exhibit 29 A is a true and
14 accurate copy of United Airlines passenger data report showing
15 that the airline tickets for Curanovic and Neza on the flights
16 discussed above in paragraph one were purchased in the name
17 Frank A. Yacullo.

18 Paragraph 3. Government Exhibit 28 is a true and
19 accurate copy of an American Express account statement for
20 Frank A. Yacullo for the period May between, 2006 to June 6,
21 2006 showing United Airlines charges incurred on May 10, 2006
22 for the purchase of airline tickets for Chris Curanovic and
23 Beznik Neza with the departure date of May 18, 2006.

24 Paragraph 4. Government Exhibit 30 is a true and
25 accurate still photograph of Curanovic from a security video

1 recording taken at LAX on May 19, 2006.

2 Paragraph 5. Government Exhibit 38 is a true and
3 accurate still photograph of Curanovic and Neza from a
4 security video recording taken at LAX on May 19, 2006.

5 Paragraph 6. Government Exhibit 30 B is a true and
6 accurate still photograph of Neza from a security video
7 recording taken at LAX on May 19, 2006.

8 Paragraph 7. This stipulation and Government
9 Exhibits 29 through 30 A and B, are admissible in evidence at
10 trial.

11 That is signed by all counsel on June 7, 2010.

12 THE COURT: All right. Exhibit 601 and the
13 documents referenced therein are admitted.

14 (So marked.)

15 MS. POSA: Government Exhibit 602, another
16 stipulation.

17 THE COURT: The parties all agree to the following:

18 MS. POSA: If called to testify, representatives
19 from the Burbank Police Department would state that they
20 seized the following items at 4121 Hood Avenue, Burbank
21 California after responding to a 911 call reporting an
22 attempted robbery at that location on May 19, 2006.

23 One. A black case identified as Government Exhibit
24 45. 2. Plastic zip ties identified as Government Exhibit 47.
25 3. A notebook identified as Government Exhibit 48.

1 4. In addition, the parties agree that Exhibits
2 520, 520 A through E; 521 and 521 A through C are photographs
3 of 4121 Hood Avenue, the location of the robbery attempt that
4 occurred on May 19, 2006.

5 Paragraph 5. This stipulation and Government
6 Exhibits 45, 47, 48; 520, 520 A through E, 521 and 521 A
7 through C, are admissible in evidence at trial.

8 Signed by all counsel on June 7, 2010.

9 THE COURT: That was 602?

10 MS. POSA: Yes, your Honor.

11 THE COURT: That and the exhibits referenced therein
12 are admitted into evidence.

13 MS. POSA: Government Exhibit 603.

14 THE COURT: Another stipulation to which all parties
15 have agreed provides as follows:

16 MS. POSA: If called to testify, representatives
17 from the Burbank Police Department Tape and Records Unit would
18 state the following:

19 Paragraph one. Government Exhibit 41 is a true and
20 accurate recording of 911 calls received by the Burbank Police
21 Department's 911 operators and dispatchers on May 6, 2006 at
22 approximately 4:07 p.m.

23 Paragraph 2. Government Exhibit 42 is a true and
24 accurate transcript of the 911 calls reproduced on the CD
25 marked as Government Exhibit 43 and referenced in paragraph

1 one.

2 Paragraph three. Government Exhibit 43 is a true
3 and accurate recording of 911 calls received by the Burbank
4 Police Department's 911 operators and dispatchers on May 19,
5 2006 at approximately 10:05 a.m.

6 Paragraph 4. Government Exhibit 44 is a true and
7 accurate transcript of the 911 calls reproduced on the CD
8 marked as Government Exhibit 45 and reference in paragraph
9 three.

10 Paragraph 5. The information contained in
11 Government Exhibits 41 and 43 was recorded and maintained in
12 the ordinary course of business of the Burbank Police
13 Department.

14 Paragraph 6. It was the regular practice of the
15 Burbank Police Department to record and maintain the
16 information contained in Government Exhibits 41 and 43.

17 Paragraph 7. The Burbank Police Department recorded
18 and maintained the information contained in Government
19 Exhibits 41 and 43 at or near the time of its making from
20 information made or transmitted by a person with knowledge.

21 Paragraph 8. This stipulation and Government
22 Exhibits 41, 42, 43 and 44 are admissible in evidence at
23 trial.

24 Signed by all counsel on June 7, 2010.

25 THE COURT: 603 and the accompanying exhibits are

1 admitted into evidence.

2 (So marked.)

3 MS. POSA: One moment, your Honor?

4 THE COURT: All right.

5 (Pause.)

6 MS. POSA: That's all we have for right now.

7 THE COURT: Ladies and gentlemen, we'll adjourn just
8 a bit early today. I will remind you to keep an open mind and
9 not discuss the case amongst yourselves or with anyone else.
10 No research, Internet or otherwise; stay away from my media
11 that might reference anything having to do with this case.

12 Have a restful evening. Be here sharply at 9:30.
13 We'll start then. Thank you very much.

14 (Jury leaves.)

15 THE COURT: Thank you all. Recess until tomorrow
16 morning 9:30.

17 (Continued to June 16, 2010 at 9:30 a.m.)

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